

No. 1937

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

MAGGIE ELLEN PARR, JULIA AGNES PARR,
EZRA WALLACE FARROW, by G. G. LEE,
Next Friend of the Said EZRA WALLACE
FARROW, a Minor, and ORVILLE D. TOWN-
SEND, THE UNITED STATES OF AMERICA,
Trustee, and E. L. SWARTZLANDER,

Appellants,

vs.

LOUISE COLFAX,

Appellee.

TRANSCRIPT OF RECORD.

Upon Appeal from the United States Circuit Court
for the District of Oregon.

FILED

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

MAGGIE ELLEN PARR et al.,

Appellants,

vs.

LOUISE COLFAX,

Appellee.

Names and Addresses of Attorneys of Record.

S. A. LOWELL and J. P. WINTER, of Pendleton, Oregon, and JOHN McCOURT, United States Attorney, Portland, Oregon, for Appellants.

JAMES A. FEE and R. J. SLATER, Pendleton, Oregon, for Appellee.

*In the Circuit Court of the United States for the
District of Oregon.*

MAGGIE ELLEN PARR, JULIA AGNES PARR,
EZRA WALLACE FARROW, by G. G.
LEE, Next Friend of the Said EZRA WALLACE FARROW, a Minor,

Plaintiffs,

vs.

LOUISE COLFAX, ORVILLE D. TOWNSEND,
E. L. SWARTZLANDER and THE
UNITED STATES OF AMERICA, Trustee,

Defendants.

Citation on Appeal [Original].

United States of America,
District of Oregon,—ss.

To Louise Colfax and to James A. Fee and R. J.
Slater, Her Attorneys, Greeting:

Whereas, Maggie Ellen Parr, Julia Agnes Parr, Ezra Wallace Farrow by G. G. Lee, next friend of the said Ezra Wallace Farrow, a minor, the above-named plaintiffs and Orville D. Townsend, the United States of America, Trustee, and E. L. Swartzlander, defendants above named, have lately appealed to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, from a decree rendered in the Circuit Court of the United States for the District of Oregon in your favor, and have given the security required by law, you are therefore hereby cited and admonished to be and appear before said United States Circuit Court of Appeals for the said Ninth Circuit, at the city of San Francisco in said Circuit, on the 7 day of January, 1911, to do and receive what may pertain to justice to be done in the premises.

Given under my hand and seal in the City of Portland in the Ninth Circuit, this 10th day of December, 1910.

CHAS. E. WOLVERTON,

Judge of the District Court of the United States for
the District of Oregon.

United States of America,
District of Oregon,—ss.

Due service of the within citation by certified copy thereof, as required by law, is hereby acknowledged at Pendleton, Oregon, this 12th day of December, 1910.

JAMES A. FEE and
R. J. SLATER,
Attorney for Louise Colfax, One of the Above-named
Defendants.

[Endorsed]: No. 3156. In the Circuit Court of the United States for the District of Oregon. Maggie Ellen Parr et al., Plaintiffs, vs. Louise Colfax et al., Defendants. Citation on Appeal. Filed December 13, 1910. G. H. Marsh, Clerk.

*In the Circuit Court of the United States for the
District of Oregon.*

April Term 1907.

Be it remembered, That on the 4th day of June, 1907, there was duly filed in the Circuit Court of the United States for the District of Oregon, a Bill of Complaint, in words and figures as follows, to wit:

*In the Circuit Court of the United States for the
District of Oregon.*

ROSA PARR,

Plaintiff,

vs.

UNITED STATES OF AMERICA, Trustee,
Defendant.

Complaint.

To the Honorable CHARLES E. WOLVERTON,
Judge of the Circuit Court of the United States
for the District of Oregon:

Rosa Parr of Umatilla County, State of Oregon,
a mixed blood Indian woman residing upon the
Umatilla Indian Reservation in said County and
State, brings this, her bill of complaint against the
United States of America, as trustee for the heirs
of Isaac Gober, deceased, mixed blood Walla Walla
allottee No. 285 on said reservation, and therefore
your oratrix complains and alleges:

I.

That under and pursuant to an Act of Congress of
the United States of America entitled "An Act to
provide for the allotment of lands in severalty to the
Indians residing upon the Umatilla Indian Reserva-
tion, granting patents therefor and for other pur-
poses," approved March 3d, 1885, the following
described lands upon the Umatilla Indian Reserva-
tion in the State of Oregon, to wit: The South half
of the Southwest quarter of Section Twenty-three
(23), in Township Three (3), North, Range Thirty-
four (34) East of the Willamette Meridian, con-
taining eighty (80) acres, were allotted to Isaac
Gober, mixed blood Walla Walla allottee No. 285,
which said allotment was accepted by said Gober,
and thereafter a trust patent was issued therefor, as
provided in said Act of Congress.

II.

That on or about the 24th day of November, 1899,

after said allotment, said Isaac Gober died intestate, unmarried, and without issue, leaving surviving him no lineal descendants, nor father nor mother, nor brother, nor sister, except your complainant, Rosa Parr, the sole and only sister of said Isaac Gober.

III.

That by virtue of said Act of Congress and the laws of the State of Oregon, this complainant was and is the sole and only heir at law of said Isaac Gober, deceased, and that the title to said land so allotted to him immediately vested in her, upon his death, and this plaintiff ever since his death has been and now is the owner of and entitled to the immediate possession of all of said lands and the rents, issues and profits thereof, and that said defendant unlawfully denies the right of plaintiff to said allotment, and is unlawfully excluding her from the same.

To the end therefore that your oratrix have that relief that can only be obtained in a court of equity, and that the said defendant may answer the premises, but not under oath or affirmation, benefit whereof is expressly waived, she now prays the Court for a decree declaring her to be the sole and only heir at law of said Isaac Gober, deceased, and as such the owner of and entitled to the immediate possession of said lands so allotted to him, as hereinbefore described, and to all of the rents, issues and profits thereof since his death, and that she be placed in possession of said lands, and recover her costs and disbursements of this suit, and for such other and further relief in the premises as to equity may seem

meet and proper. And may it please your Honor to grant to your oratrix a writ of subpoena to be directed to the defendant herein, commanding it at a certain time to appear before this Honorable Court, and then and there full, true, direct and perfect answer make to all and singular the premises, to stand, perform and abide by such orders, directions and decrees as may be made against it in the premises as shall seem meet and agreeable to equity, and your oratrix will ever pray.

CHAMBERLAIN, THOMAS & HAILEY,
Solicitors for Complainant.

State of Oregon,
County of Umatilla,—ss.

I, Rosa Parr, being first duly sworn, say that I am the oratrix named in the foregoing entitled suit, and that the facts stated in the foregoing bill of complaint are true, as I verily believe.

ROSA PARR.

Subscribed and sworn to before me this 31st day of April, 1907.

[Seal]

DAN P. SMYTHE,
Notary Public for Oregon.

My commission expires September 25th, 1907.

Complaint. Filed June 4, 1907. J. A. Sladen,
Clerk. By G. H. Marsh, Deputy.

And afterwards, to wit, on the 25th day of November, 1907, there was duly filed in said court, an Answer, in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

ROSA PARR,

Plaintiff,

vs.

UNITED STATES OF AMERICA, Trustee,
Defendant.

Answer.

Comes now the defendant in the above-entitled cause, and makes this, its answer to the bill of complaint filed in the above-entitled cause, and now and at all times hereafter saving to itself any and all manner of benefits of exceptions or otherwise than can or may be taken to the many errors, uncertainties and imperfections in said bill of complaint contained, and for answer thereto or so much thereof as said defendant is advised is material or necessary for it to make answer to, answering says:

I.

Admits all of the allegations contained in paragraph I of said bill of complaint.

II.

Denies all of the allegations contained in paragraph II of said bill of complaint.

III.

Denies all of the allegations contained in paragraph III of said bill of complaint.

Wherefore, having fully answered, traversed and avoided or denied all matters in said bill of complaint material to this answer according to its best knowledge and belief, this defendant humbly prays this Honorable Court to enter its decree herein dismissing said bill of complaint and awarding to this defendant its costs and charges in this behalf expended and for such further and other relief in the premises to be granted as to this Honorable Court shall seem meet and in accordance with equity.

JAMES COLE,

Assistant United States Attorney.

Due, legal and timely service of the foregoing answer, by copy duly certified to by James Cole, Assistant United States Attorney for the District of Oregon, is hereby admitted at Portland, Oregon, this 22 day of Nov., 1907.

F. G. HAILEY,

Atty. for Complainant.

Answer. Filed Nov. 25, 1907. J. A. Sladen, Clerk. By G. H. Marsh, Deputy.

And afterwards, to wit, on the 7th day of April, 1910, there was duly filed in said court, a Motion to make E. L. Swartzlander, Superintendent, Umatilla Indian Reservation, a party defendant, and affidavit of S. A. Lowell, in support of motion, in words and figures as follows, to wit:

[Affidavit of Stephen A. Lowell.]

*In the Circuit Court of the United States for the
District of Oregon.*

No. 3156.

ROSA PARR,

Plaintiffs,

vs.

THE UNITED STATES, Trustee, et al.,

Defendants.

State of Oregon,

County of Umatilla,—ss.

I, Stephen A. Lowell being first duly sworn say I am one of the attorneys for the above-named plaintiff and that since the filing of the bill of complaint herein E. L. Swartzlander has become and is now duly appointed, qualified and acting superintendent and special disbursing agent of the United States for the Umatilla Indian Reservation upon which the lands described in the complaint are situated and that as such agent the said E. L. Swartzlander is in control of said lands and has collected and retained in his possession the sum of \$696.75 which has accrued from the rents of said land.

That the parties interested as defendants herein are poor persons and have no money or means with which to pay the expenses of this litigation excepting from the moneys accruing from the rents of said land.

That by reason of the above facts the said E. L.

Swartzlander is a necessary party defendant in this cause.

STEPHEN A. LOWELL.

Subscribed and sworn to before me this 7 day of April, 1910.

[Seal]

J. S. BECKWITH,

Notary Public for Oregon.

[Motion to Make E. A. Swartzlander a Party Defendant.]

*In the Circuit Court of the United States for the
District of Oregon.*

ROSA PARR,

Plaintiffs,

vs.

THE UNITED STATES, Trustee, et al.,

Defendants.

Based upon the affidavit of Stephen A. Lowell filed herewith comes now the plaintiff in the above-entitled suit and moves this Court for an order making the said E. L. Swartzlander, referred to in said affidavit, a party defendant herein.

S. A. LOWELL,

Solicitors for Plaintiff

Motion to make E. L. Swartzlander defendant and affidavit. Filed April 7, 1910. G. H. Marsh, Clerk.

And afterwards, to wit, on Thursday, the 7th day of April, 1910, the same being the 3rd judicial day of the regular Pendleton, 1910, term of said court—Present, the Honorable ROBERT S. BEAN, United States District Judge presiding—the following proceedings were had in said cause, to wit:

**[Order Making E. L. Swartzlander a Defendant,
and Re Answer.]**

*In the Circuit Court of the United States for the
District of Oregon.*

No. 3156.

April 7, 1910.

ROSA PARR

vs.

THE UNITED STATES OF AMERICA.

Now, at this day, this cause comes on to be heard upon the motion of the plaintiff, filed herein, for an order to make E. L. Swartzlander, Superintendent and Special Disbursing Agent of the Umatilla Indian Reservation, a party defendant in this cause, said plaintiff appearing by Mr. S. A. Lowell, of counsel, and the defendant, the United States of America, appearing by Mr. John McCourt, United States attorney; and it appearing to the Court from the affidavit of said S. A. Lowell, filed herein, that the lands in controversy in this suit are situated on the Umatilla Indian Reservation, and are held by the defendant, the United States of America, as trustee;

that the said E. L. Swartzlander is the duly appointed and acting Superintendent and Special Disbursing Agent of the said Umatilla Indian Reservation, and that as such superintendent and agent he is in control of the lands in controversy in this suit, and has collected the rents therefrom, and retains the same in his possession, and that the money now in his possession received as rents from said land amounts to the sum of six hundred ninety-six dollars and seventy-five cents; and the said United States Attorney consenting hereto, IT IS ORDERED that the said E. L. Swartzlander as Superintendent and Special Disbursing Agent of said Umatilla Indian Reservation be, and he is hereby, made a defendant to this cause.

And, on motion of said United States Attorney, IT IS ORDERED that the answer of the defendant, the United States of America, in this cause may stand as the answer of said E. L. Swartzlander.

R. S. BEAN,
Judge.

Order making Swartzlander, Supt., a defendant.
Filed April 7, 1910. G. H. Marsh, Clerk. By J. W. Marsh, Deputy.

And afterwards, to wit, on the 8th day of April, 1910, there was duly filed in said court, a Replication, in words and figures as follows, to wit:

*In the Circuit Court of the United States for the
District of Oregon.*

ROSA PARR,

Plaintiff,

vs.

UNITED STATES OF AMERICA, Trustee,
Defendant.

**Replication of Complainant to Answer of the De-
fendant.**

This replicant, Rosa Parr, saving and reserving to herself all and all manner of advantages of exception, which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of defendant, The United States of America, Trustee, for replication thereunto sayeth that she doeth and will aver, maintain and prove her said bill to be true, certain and sufficient in the law to be answered unto by said defendant, and that the answer of said defendant is very uncertain, evasive and insufficient in law to be replied unto by this replicant, without that, that any other matter or thing in said answer contained, material or effectual in the law to be replied unto, confessed or avoided, traversed, or denied, is true; all of which matters and things this replicant is ready to aver, maintain and prove, as this Honorable Court shall direct, and humbly prays as in and by her said bill she hath already prayed.

STEPHEN A. LOWELL,
Solicitors for Complainant.

Replication. Filed April 8, 1910. G. H. Marsh,
Clerk. By V. Johnston, Deputy.

And afterwards, to wit, on the 13th day of June, 1910,
there was duly filed in said court, an Opinion, in
words and figures as follows, to wit:

[Opinion.]

*In the Circuit Court of the United States for the
District of Oregon.*

ROSIE PARR,

Plaintiff,

vs.

UNITED STATES OF AMERICA, Trustee,
Defendant.

LOWELL & WINTER, Attorneys for Plaintiff.

JOHN McCOURT, U. S. Attorney.

BEAN, District Judge:

This case involves the validity of the marriage of
an Indian allottee on the Umatilla Reservation, en-
tered into according to the tribal customs after the
allotment. The marriage is valid and decree will be
entered accordingly. Yakima Joe vs. To-is-lap, just
decreed.

Portland, Oregon, June —, 1910.

Opinion. Filed June 13, 1910. G. H. Marsh,
Clerk.

And afterwards, to wit, on the 13th day of August, 1910, there was duly filed in said court, a Bill of Revivor, in words and figures as follows, to wit:

*In the Circuit Court of the United States for the
District of Oregon.*

MAGGIE ELLEN PARR and JULIA AGNES
PARR, EZRA WALLACE FARROW, by
G. G. LEE, Next Friend of Said EZRA
WALLACE FARROW, a Minor,
Plaintiffs,

vs.

THE UNITED STATES OF AMERICA, Trustee,
ORVILLE D. TOWNSEND, also Known as
ORVILLE D. SAUNDERS,
Defendants.

Bill of Revivor.

To the Honorable, the Judges of the Above-entitled
Court:

Maggie Ellen Parr and Julia Agnes Parr and Ezra Wallace Farrow bring this their bill of revivor against the United States of America, Trustee, Orville D. Townsend, also known as Orville D. Saunders, said Orville D. Townsend being a citizen of the State of Washington and a resident of the city of Toppenish in said State.

And thereupon your orators complain and say:

I.

That on or about the 4th day of June, 1907, Rosa Parr filed her complaint in the above-entitled court against the United States of America, Trustee, which

complaint was duly verified and was as follows, to wit:

*“In the Circuit Court of the United States for the
District of Oregon.*

ROSA PARR,

Plaintiff,

vs.

UNITED STATES OF AMERICA, Trustee,
Defendant.

COMPLAINT.

To the Honorable CHARLES E. WOLVERTON,
Judge of the Circuit Court of the United States
for the District of Oregon:

Rosa Parr of Umatilla County, State of Oregon,
a mixed blood Indian woman residing upon the
Umatilla Indian Reservation in said County and
State, brings this, her bill of complaint against the
United States of America, as trustee for the heirs
of Isaac Gober, deceased, mixed blood Walla Walla
allottee No. 285 on said reservation, and therefore
your oratrix complains and alleges:

I.

That under and pursuant to an Act of Congress of
the United States of America, entitled “An Act to
provide for the allotment of lands in severalty to the
Indians residing upon the Umatilla Indian Reserva-
tion, granting patents therefor and for other pur-
poses,” approved March 3d, 1885, the following
described lands upon the Umatilla Indian Reserva-
tion in the State of Oregon, to wit: The South half
of the Southwest quarter of Section Twenty-three

(23), in Township Three (3) North, Range Thirty-four (34) East of the Willamette Meridian, containing eighty (80) acres, were allotted to Isaac Gober, mixed blood Walla Walla allottee No. 285, which said allotment was accepted by said Gober, and thereafter a trust patent was issued therefor, as provided in said Act of Congress.

II.

That on or about the 24 day of November, 1899, after said allotment, said Isaac Gober died intestate, unmarried, and without issue, leaving surviving him no lineal descendants, nor father, nor mother, nor brother, nor sister, except your complainant, Rosa Parr, the sole and only sister of said Isaac Gober.

III.

That by virtue of said Act of Congress and the laws of the State of Oregon, this complainant was and is the sole and only heir at law of said Isaac Gober, deceased, and that the title to said land so allotted to him immediately vested in her, upon his death, and this plaintiff ever since his death has been and now is the owner of and entitled to the immediate possession of all of said lands and the rents, issues and profits thereof, and that said defendant unlawfully denies the right of plaintiff to said allotment, and is unlawfully excluding her from the same.

To the end therefore that your oratrix have that relief that can only be obtained in a court of equity, and that the said defendant may answer the premises, but not under oath or affirmation, benefit whereof is expressly waived, she now prays the Court for a decree declaring her to be the sole and only heir at

law of said Isaac Gober, deceased, and as such the owner of and entitled to the immediate possession of said lands so allotted to him, as hereinbefore described, and to all of the rents, issues and profits thereof since his death, and that she be placed in possession of said lands, and recover her costs and disbursements of this suit, and for such other and further relief in the premises as to equity may seem meet and proper. And may it please your Honor to grant to your oratrix a writ of subpoena to be directed to the defendant herein, commanding it at a certain time to appear before this Honorable Court, and then and there full, true, direct and perfect answer make to all and singular the premises, to stand, perform and abide by such orders, directions and decrees as may be made against it in the premises as shall seem meet and agreeable to equity, and your oratrix will ever pray.

CHAMBERLAIN, THOMAS & HAILEY,

Solicitors for Complainant."

And that thereafter said cause was placed at issue by the filing of an answer and replication, and thereafter the cause was referred to Vida Johnston of Pendleton, Umatilla County, Oregon, for the taking of testimony, and thereafter the testimony was taken and filed with the above-entitled court under the certificate of said referee, and that thereafter said cause was argued by the filing of written briefs and has been submitted to the Court for determination, and that no decree has been entered.

II.

That during the pendency of the proceedings, un-

der said bill of complaint, on or about the 15th day of May, 1910, the said Rosa Parr died, leaving as her sole and only heirs at law your petitioners, Maggie Ellen Parr, Julia Agnes Parr, who are daughters of said Rosa Parr, deceased, and Wallace Ezra Farrow who is a son of said Rosa Parr, deceased, and defendant Orville D. Townsend, also known as Orville D. Saunders, the husband of said Rosa Parr, deceased; that your orators are informed that the true name of said defendant is Orville D. Townsend, but that he usually goes by the name of Orville D. Saunders.

III.

That the lands involved in said suit are Umatilla Indian Reservation lands unpatented; that the title thereto is still in the Government of the United States, and that the courts of the State of Oregon have no jurisdiction to administer upon the interest of said deceased therein, and that it is necessary that this court shall enter its decree declaring who are the heirs of said Rosa Parr, deceased, for the reason that when patent issues to said lands it will be issued to the heirs of the allottee, and it will be necessary, therefore, in this decree for this Court to determine who the heirs of said allottee are.

IV.

That your orators further show that these plaintiffs and said Wallace Ezra Farrow are the only children or lineal descendants of Rosa Parr, deceased, and that after commencing said suit she remarried, and that the defendant Orville D. Saunders, whose true name is Orville D. Townsend, was at the

time of her death her husband, and that these plaintiffs and said Wallace Ezra Farrow are the sole and only heirs of her, the said Rosa Parr, deceased, in said lands, subject to the curtesy right, if any exists, upon Umatilla Indian Reservation lands unpatented, in the defendant Townsend, her said husband.

V.

Your orators further show that said suit having become abated by reason of the death of said Rosa Parr, as aforesaid, your orators are advised that they are entitled to have the same revived and restored to the same plight and condition in which it was at the time of the death of said Rosa Parr, and to have the same relief against the United States of America, trustee, defendant.

Wherefore, your orators pray that said cause may be revived by the decree of this Honorable Court, and that it may proceed to a decree in favor of the heirs of said deceased in accordance with the prayer of the original complaint herein.

And your orators further pray that it may please your Honors to grant a writ of subpoena to be directed to the said United States of America, trustee, and Orville D. Saunders, whose true name is Orville D. Townsend, thereby commanding them at a certain time and under a certain penalty therein to be limited, personally to appear before this Honorable Court and to show cause, if any they have, why this cause should not be revived, and if no cause shall be shown by said defendants why said suit should not be revived, then that a decree be entered reviv-

ing said suit in favor of the heirs of said deceased.

LOWELL & WINTER,
Solicitors for Complainants.

State of Oregon,
Umatilla County,—ss.

I, Maggie Ellen Parr, being first duly sworn, say that I am one of the plaintiffs herein, and that I know the contents of the foregoing bill of revivor, and that the same are true as I verily believe.

MAGGIE ELLEN PARR.

Subscribed and sworn to before me this 17th day of June, 1910.

[Seal]

STEPHEN A. LOWELL,
Notary Public for Oregon.

Bill of Revivor. Filed Aug. 13, 1910. G. H. Marsh, Clerk.

And afterwards, to wit, on the 17th day of August, 1910, there was duly filed in said court, an Answer to Bill of Revivor, in words and figures as follows, to wit:

*In the Circuit Court of the State of Oregon for the
District of Oregon.*

MAGGIE ELLEN PARR, and JULIA AGNES
PARR, EZRA WALLACE FARROW, by G.
G. LEE, Next Friend of Said EZRA WAL-
LACE FARROW, a Minor,
Plaintiffs,
vs.

THE UNITED STATES OF AMERICA, Trustee,
and ORVILLE D. TOWNSEND, also Known
as ORVILLE D. SAUNDERS, and LOUISE
COLFAX, and E. L. SWARTZLANDER,
Defendants.

Answer [to Bill of Revivor].

Come now Louise Colfax, and the United States of America, trustee, two of the defendants in the above-entitled cause and make this their answer to the bill of revivor, filed herein, and now and at all times hereafter saving to themselves any and all manner of benefits of exceptions, or otherwise, that can or may be taken to the many errors, uncertainties and imperfections in said bill of complaint contained, and for answer thereto, or so much thereof as said defendants are advised is material, or necessary for them to make answer to, answering, say:

1.

These defendants admit all the allegations contained in paragraph 1 of said bill.

2.

Answering paragraph 2 these defendants admit

that, during the pendency of the proceedings, under the said bill of complaint, on or about the 15th day of May, 1910, the said Rosa Parr died, leaving as her sole and only heirs at law the petitioners, Maggie Ellen Parr, Julia Agnes Parr, who are daughters of the said Rosa Parr, deceased, and Wallace Ezra Farrow, who is a son of the said Rosa Parr, deceased, and defendant Orville D. Townsend, also known as Orville D. Saunders, the husband of the said Rosa Parr, deceased.

3.

That these defendants admit the allegations contained in paragraph 3 of the said bill.

4.

In answering paragraph 4 of the said bill of revivor, these defendants admit that the said Wallace Ezra Farrow, Maggie Ellen Parr and Julia Agnes Parr, are the only children, or lineal descendants of Rosa Parr, deceased, and that after commencing said suit she remarried and that the defendant, Orville D. Saunders, whose name is Orville D. Townsend, was at the time of her death her husband, but these defendants deny that the said plaintiffs are the sole or only heirs or any heirs of her, the said Rosa Parr, deceased, in said lands subject to the curtesy right, or any curtesy or right upon the Umatilla Indian Reservation land unpatented in the defendant, Townsend, her said husband, and these defendants further answering the said allegations allege that the said Rosa Parr, at the time of her said death, and at no time prior thereto, was not the only or any heir to the said Isaac Gober, for the reason that,

at the time of the death of the said Isaac Gober, he left surviving him his wife, this defendant, Louise Colfax, with whom the said Isaac Gober intermarried upon the Umatilla Indian Reservation, after the allotment was made to him, and with whom he was living at the time of his death under the laws and customs of the Indians residing upon the Umatilla Indian Reservation and who thereafter, within two weeks of the death of the said Isaac Gober, the said defendant, Louise Colfax-----being at the time of the death of the said Isaac Gober his wife, the said defendant and the said Isaac Gober having intermarried and lived and cohabited together as husband and wife under the laws and customs of the Indians constituting the consolidated tribes or bands of Indians located and living upon the Umatilla Indian Reservation in Umatilla County, State of Oregon, the said defendant, Louise Colfax. being a full blood Indian woman, and the said Isaac Gober being a mixed blood Indian man, and being members of the Walla Walla band of Indians, and, at the time of his said death, the said Isaac Gober left surviving him no lineal descendants, and by reason of the facts herein stated the said infant son of the defendant, Louise Colfax and the said Isaac Gober, became the sole heir, under the laws of the State of Oregon, of the said Isaac Gober and as such the equitable owner in fee of the lands allotted to the said Isaac Gober upon the Umatilla Indian Reservation and which is described in said Bill of Revivor, subject only to the dower rights of the defendant, Louise Colfax in and to said land, the said dower right being, under

the laws of the State of Oregon, the right to the use of one-half of said land, or rents, issues and profits thereof, during the life of the said defendant, Louise Colfax, and thereafter the said infant son of the said Isaac Gober died intestate, leaving no lineal descendants, but left the defendant, Louise Colfax, his mother, surviving him as his only heir.

5.

In answering paragraph 5 of the said bill of revivor, these defendants admit that the plaintiffs are entitled to have the said suit revived and restored to the said plight and condition in which it was at the time of the death of the said Rosa Parr, but these defendants deny that the said plaintiffs have any right to the same or any relief against the United States of America, trustee, defendant, but these defendants allege that they are entitled to a decree declaring the defendant, Louise Colfax, to be the sole heir, under the laws of the State of Oregon, of the deceased, Isaac Gober, and as such is the owner of the said equitable title in fee of said lands so allotted to the said Isaac Gober, and the rents, issues and profits thereof.

Wherefore, these answering defendants pray a decree of this Honorable Court dismissing the bill of complaint and the bill of revivor.

JOHN McCOURT,

U. S. District Attorney.

C. H. CARTER, and

R. J. SLATER,

Solicitors for Deft. Louise Colfax.

Answer to Bill of Revivor. Filed August 17, 1910. G. H. Marsh, Clerk.

And afterwards, to wit, on the 17th day of August, 1910, there was duly filed in said court, a Replication, in words and figures as follows, to wit:

*In the Circuit Court of the United States for the
District of Oregon.*

MAGGIE ELLEN PARR and JULIA AGNES
PARR, EZRA WALLACE FARROW, by G.
G. LEE, Next Friend of Said EZRA WAL-
LACE FARROW, a Minor,

Plaintiffs,

vs.

THE UNITED STATES OF AMERICA, Trustee,
and ORVILLE D. TOWNSEND, Also Known
as ORVILLE D. SAUNDERS, and LOUISE
COLFAX, and E. L. SWARTZLANDER,

Defendants.

**Replication [to Answer of Louise Colfax and
U. S. A.].**

For replication to the answer of the defendants Louise Colfax and the United States of America, trustee, in this cause, come the plaintiffs, by their solicitors, and, reserving to themselves the benefit of all proper admissions and disclosures contained in said answer, join the issue upon said answer and every allegation thereof, and these replicants are ready to prove all the matters contained in their bill

as this Honorable Court may direct.

LOWELL & WINTER,

Solicitors for Plaintiffs.

Replication. Filed August 17, 1910. G. H. Marsh,
Clerk.

And afterwards, to wit, on Wednesday, the 17th day of August, 1910, the same being the 109th judicial day of the regular April, 1910, term of said court—Present, the Honorable ROBERT S. BEAN, United States District Judge presiding—the following proceedings were had in said cause, to wit:

[Order Allowing Entry of Decree Nunc Pro Tunc.]

In the Circuit Court of the United States for the District of Oregon.

No. 3156.

LOUISE COLFAX,

Cross-complainant,

vs.

MAGGIE ELLEN PARR, JULIA AGNES PARR,
EZRA WALLACE FARROW, G. G. LEE,
Next Friend of the Said EZRA WALLACE
FARROW, a Minor, ORVILLE D. TOWN-
SEND, E. L. SWARTZLANDER and THE
UNITED STATES OF AMERICA, Trustee,
Cross-defendants.

This matter coming on at this time to be heard upon the motion of the cross-complainant by her solicitors Fee and Slater, in open court made for the

entry of a decree *nunc pro tunc* as of the 14th day of June, 1910, in accordance with the decision of the Court rendered herein upon said date, and for leave to file a cross-bill, answer and replication in said cause *nunc pro tunc* as of said date, the said cross-complainant appearing by Fee and Slater of counsel and the defendant Yakima Joe by Lowell and Winter of counsel, and the defendants Orville D. Townsend, E. L. Swartzlander and the United States of America, trustee appearing by Honorable John McCourt, United States Attorney for the District of Oregon, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED that the said decree may be entered *nunc pro tunc* as of the said date, and the said proceedings filed *nunc pro tunc* as of said date.

Done and dated in open court at Portland, Oregon, this 17th day of August, 1910.

R. S. BEAN,
Judge.

Order. Filed August 17, 1910. G. H. Marsh,
Clerk.

And afterwards, to wit, on the 17th day of August, 1910, as of and for June 14, 1910, there was duly filed in said court, a Cross-bill of Louisa Colfax, in words and figures as follows, to wit:

[Cross-bill of Louise Colfax.]

In the Circuit Court of the United States for the District of Oregon.

LOUISE COLFAX,

Cross-complainant,

vs.

MAGGIE ELLEN PARR, JULIA AGNES PARR,
EZRA WALLACE FARROW, by G. G.
LEE, Next Friend of the Said EZRA WALLACE FARROW, a Minor, ORVILLE D. TOWNSEND, E. L. SWARTZLANDER and THE UNITED STATES OF AMERICA,
Trustee,

Cross-defendants.

To the Hon. Judges of the Circuit Court of the United States for the District of Oregon:

Louise Colfax, an Indian woman and a citizen of the United States and a resident of the Yakima Indian Reservation in the State of Washington, and the same party who was made a defendant in the bill of complaint in the suit entitled “Rosa Parr, plaintiff, vs. The United States of America, Trustee, and Louise Colfax, defendants,” exhibits this her cross-bill and states as follows:

I.

That upon the —— day of ———, 191—, the said Rosa Parr commenced a suit in this court and exhibited and filed therein her bill of complaint against this cross-complainant and The United States of America, trustee, for the purpose of obtaining a

decree of this Honorable Court declaring the said plaintiff to be the sole heir under the laws of the State of Oregon of one Isaac Gober, deceased, and in the said bill of complaint the said Rosa Parr alleged substantially as follows:

“That under and pursuant to an Act of Congress of The United States of America entitled, ‘An act to provide for the allotment of lands in severalty to the Indians residing upon the Umatilla Indian Reservation granting patents therefor, and for other purposes,’ approved March 3, 1885, the following described lands upon the Umatilla Indian Reservation in the State of Oregon, to wit: The S. $\frac{1}{2}$ of the SW. $\frac{1}{4}$ of Sec. 23, in Twp. 3 S., R. 35 E. W. M. containing 80 acres were allotted to Isaac Gober, a mixed blood, Walla Walla allottee No. 285, which said allotment was accepted by said Gober and thereafter a trust patent was issued therefor as provided in said Act of Congress.

That on or about the 24th day of November, 1899, after said allotment, said Isaac Gober died intestate, unmarried and without issue, leaving no lineal descendants, nor father, nor mother, nor brother, nor sister, except your complainant, Rosa Parr, the sole and only sister of the said Isaac Gober.

That by virtue of the said Act of Congress and the laws of the State of Oregon, this complainant was and is the sole and only heir at law of said Isaac Gober, deceased, and that the title to the said land, so allotted to him, immediately vested in her, upon his death, and this plaintiff ever since his death has been and now is the owner of and entitled to the

immediate possession of all of the said lands and the rents, issues and profits thereof, and that said defendant unlawfully denies the right of plaintiff to said allotment and is unlawfully excluding her from the same.”

And thereupon the said Rosa Parr prayed that the said defendants be required to answer the premises but not under oath or affirmation, benefit whereof is expressly waived, and for a decree of this Court declaring her to be the sole and only heir of the said Isaac Gober, deceased, and as such the owner of and entitled to the immediate possession of said land so allotted to him, and all the rents, issues and profits thereof since his death, and that she be placed in possession of said lands and that she recover her costs and disbursements of said suit and for such other and further relief in the premises as to equity may seem meet and proper, and that the Court grant a writ of subpoena to be directed to the defendant therein etc.

2.

That thereafter the defendant, The United States of America, Trustee, filed its answer therein denying the equities in said bill contained and this cross-complainant filed her separate answer therein denying the equities in said bill contained and alleging that your cross-complainant was at all the times mentioned in the said bill of complaint, and at all times, mentioned in her said answer, a full blood Indian woman between 30 and 40 years old, and that she belonged to the Yakima band of Indians, residing and located upon the Yakima Indian Reservation in

the State of Washington, that about three or four years prior to the 24th day of November, 1899, your cross-complainant intermarried with the said Isaac Gober on the Umatilla Indian Reservation in the State of Oregon, according to the customs of the consolidated tribes of the Walla Walla, Umatilla and Cayuse bands of Indians living and residing upon the said Umatilla Indian Reservation and thereafter the said Isaac Gober and your cross-complainant lived and cohabited together as husband and wife upon the said Umatilla Indian Reservation in Umatilla County, Oregon, until on or about the said 24th day of November, 1899, when the said Isaac Gober died intestate, leaving surviving him no lineal descendants, but did leave surviving him your complainant as his wife who was at the time of the death of the said Isaac Gober with child by him, and thereafter about two weeks after the death of Isaac Gober there was born to me a male child, who was the son of the said Isaac Gober, that by reason of the said death of the said Isaac Gober and the birth of the said child the said child became the sole heir of the said Isaac Gober under the laws of the State of Oregon and as such was the equitable owner of the equitable title in and to the lands described in the said bill of complaint which were allotted to the said Isaac Gober, under the said Act of Congress, the said equitable title being subject to a dower estate, under the laws of the State of Oregon in your cross-complaint, who was the wife of the said Isaac Gober, which dower estate consisted of the right to the use and occupation of one-half of said land, or the rents,

issues and profits thereof, during the lifetime of your cross-complainant, and which answer prayed for a decree dismissing the said bill, &c.

3.

And your cross-complainant further shows to your Honors:

That on the 9th day of June, 1855, a treaty between the United States on the one hand, and the Walla Walla, Cayuse and Umatilla Indian bands and Indian tribes on the other, was concluded at Camp Stephens, in Walla Walla Valley, in Washington territory, and duly signed by the representatives of said parties, and that said treaty was ratified by the United States Senate on the 8th day of March, 1859, wherein and whereby the said tribes of Indians through their duly accredited representatives, ceded to the United States all their right, title and claim to a large tract of country, situate in the territory of Oregon and Washington; and, after a description of said lands so ceded, provided as follows: "That so much of the country described above as is contained in the following boundaries, which tract for the purpose contemplated shall be held and regarded as Indian reservation, to wit: commencing in the middle of the channel of the Umatilla River, opposite the mouth of Wild Horse creek; thence up the middle of the channel of said creek to its source; thence southerly to a point in the Blue Mountains known as Lee's Encampment; thence in a line to the head waters of Howtome creek; thence west to the divide between Howtome and Birch creek; thence northerly along said divide to a point due west of the south-

west corner of William C. McKay's land claim; thence east along his line to his southwest corner; thence to the place of beginning, all of which tract shall be set apart and, so far as necessary, surveyed and marked out for their exclusive use; not shall any white person be permitted to reside upon the same without permission of the agent and superintendent. The said tribes and bands agree to move to and settle upon the same within one year after the ratification of this treaty, without any additional expense to the Government, other than is provided by this treaty, and until the expiration of the time specified that said bands shall be permitted to occupy and reside upon the tracts now possessed by them; guaranteeing to all citizens of the United States the right to enter upon and occupy as settlers any land not actually enclosed by said Indians.

4.

That said land described above is known and designated as the Umatilla Indian Reservation in Umatilla County, State of Oregon.

5.

That said treaty provided in article 6, as follows: "The President may from time to time, at his discretion cause the whole of such portion as he may think proper of the tract that may now or hereafter be set apart as a permanent home for the Indians to be surveyed in lots and assigned to such Indians of the confederated bands, as may wish to enjoy the privileges, and locate thereon permanently; to a single person over twenty-one years of age, forty acres; to a family of two persons, sixty acres; to a family of

three and not exceeding five, eighty acres; to a family of six and not exceeding ten, one hundred and twenty acres; and to each family over ten in number, twenty acres to each additional three *numbers*, and the President may provide for such rules and regulations as will secure to a family, in case of the death of the head thereof, the possession and enjoyment of such permanent home and improvement thereon, and he may at any time, at his discretion, after such person or family, has made location on the land assigned, as a permanent home, issue a patent to such person or family for such assigned land, conditioned that the tract shall not be aliened or leased for a longer term than two years, and shall continue in force until a State constitution embracing such lands within its limits shall have been formed, and the legislature of the state shall remove the restriction.”

6.

That on the 3d day of March, 1885, the Congress of the United States passed an act entitled “An Act providing for the allotment of lands in severalty to the Indians residing upon the Umatilla Reservation in the State of Oregon and granting patents therefor, and for other purposes.” Which said act was approved by the President of the United States March 3d, 1885; which said act provided that the President of the United States should cause lands to be allotted to the confederated bands of Cayuse, Walla Walla and Umatilla Indians residing upon the Umatilla Reservation in the State of Oregon as follows:

Of agricultural lands to each of the family, 160 acres; to each single person over the age of 18 years,

80 acres; to each orphan child under 18 years of age, 80 acres; and to each child under 18 years of age not otherwise provided for, 40 acres; and that all allotments to heads of families and to children under the age of 18 years belonging to families, shall be made upon selection made by the head of the family and the allotments to persons over the age of 18 years not classed as heads of families, should be made upon the selection of such persons." Said act further provided for the appointment of three disinterested persons by the President to go upon said reservation and make said allotments in severalty, and to do all such acts as were further specified in said act to effectually carry out the purpose thereof.

7.

That in pursuance of said authority the President of the United States did appoint commissioners, who thereafter carried out the purposes of said act and made allotments of lands as therein provided to the members of said confederated tribes of Indians, for the bands upon the said Umatilla Reservation, which said work was completed and said allotments made and approved about the 12th day of April, 1893.

8.

That prior to making the allotment, a commission of three persons *were* appointed by authority of the United States to obtain the written consent of a majority of the head men of said three tribes of Indians to the making of the allotments of lands amongst them, and said commission did, prior to the making of the allotment, obtain the written consent of the chiefs, and of a majority of the head men of all three

of said tribes to said allotment, which consent was given by them, severally and individually, in writing and over their signatures.

9.

That at the time of the allotment by the United States of the lands of the Umatilla Reservation to the Indians belonging on said reservation, there were about 1045 of such Indians, to wit: about 393 Indians of the Cayuse tribe, 196 Indians of the Umatilla tribe and 456 Indians of the Walla Walla tribe, and there were then allotted to them in all about 100,000 acres of land on said reservation, the heads of families of said Indians being allotted 160 acres each, the adults not heads of families being allotted 80 acres each and the infants 40 acres each; and about 50,000 acres of said Umatilla Reservation was set apart and held, and is still held, for the use of all of said Indians in common for pasturing, timber and other purposes; and about 25,000 acres of said reservation, as it existed at the time of the allotment, was cut off and sold in parcels to the highest bidder for them.

10.

And this cross-complainant further alleges that at all the times mentioned herein, the United States of America, has kept and maintained, and still does keep and maintain, an agent and superintendent (E. L. Swartzlander being such superintendent at this time) upon and over said Umatilla Indian Reservation and the Indians belonging thereto and thereon, who at all said times has had supervision and control of said reservation and Indians who are allottees thereon, under and in accordance with the laws of

the United States and of the Rules and Regulations made by the Secretary of the Interior pursuant to said laws.

11.

That at all the times mentioned herein and from time immemorial it has been, and still is, the custom, usage and habit of the Indians belonging upon the Umatilla Indian Reservation, to wit: the Umatilla, Cayuse, and Walla Walla tribes of Indians, for the males and females of said tribes to intermarry by merely agreeing to live together and cohabiting as husband and wife, without other or further ceremony, act or proceeding and for husband and wife to terminate the marriage contract and relation and become divorced from each other by agreeing to separate and ceasing cohabitation, or by either husband or wife deserting his or her consort and ceasing to live with said consort as husband or wife, without any other ceremony, act or proceeding.

12.

And your cross-complainant now shows to your Honors that under and pursuant to said act of Congress of the United States of America, approved March 3, 1885, the lands described in the said bill of complaint, to wit, the S. $\frac{1}{2}$ of the SW. $\frac{1}{4}$ of Sec. 23 Twp. 3 N. R. 34 E. W. M., containing 80 acres were allotted to Isaac Gober, a mixed blood Indian, a member of the Walla Walla band of Indians, who at said time lived and resided upon the said Umatilla Indian Reservation, the said allotment being known and designated as Walla Walla No. 285.

13.

That thereafter, to wit, on or about the 12th day of September, 1893, the said allotment was approved by the Secretary of the Interior and thereafter a trust patent was issued to the said Isaac Gober under the terms and conditions of the said Act of Congress, that after the said allotment had been made and approved, as aforesaid, to wit: On or about the — day of ———, 1895, the said Isaac Gober, while residing upon the Umatilla Indian Reservation as a member of the Walla Walla band of Indians, and your cross-complainant being a full blood Indian woman and a member of the Yakima band of Indians intermarried upon the Umatilla Indian Reservation in Umatilla County, State of Oregon, by then and there agreeing with each other under the laws and customs of the said tribes of Indians located and residing upon the said Umatilla Indian Reservation to live and cohabit together as husband and wife, and thereafter the said Isaac Gober and your cross-complainant did live and cohabit together as husband and wife, upon the said Umatilla Indian Reservation, continuously, until the 24th day of November, 1899, at which time the said Isaac Gober died intestate and left surviving him no children, or other lineal descendants, but did leave surviving him your cross-complainant, his wife, who at the time of the said death of the said Isaac Gober, was with child by him and about two weeks after the death of the said Isaac Gober there was born to your cross-complainant a male child, a son of the said Isaac Gober, deceased.

14.

That by reason of the death of the said Isaac Gober and the birth of the said male child, the son of the said Isaac Gober, and your complainant, the said male child became and was the sole heir of the said Isaac Gober under the laws of the State of Oregon, and by reason thereof became the owner in fee of the equitable title to said land, subject only to the dower estate therein of your cross-complainant, which dower estate, under the laws of the State of Oregon at the time of the death of the said Isaac Gober, consisted of a life estate of one-half in said lands or the rents, issues and profits thereof.

15.

That by reason of the death of the said son of the said Isaac Gober and your cross-complainant, after the death of the said Isaac Gober, your cross-complainant, the mother of the said son deceased, became and is under the laws of the State of Oregon, the sole heir of the said son and the said Isaac Gober, and as such, is the sole owner of the equitable title in fee to the said land and is entitled to the actual possession thereof.

16.

That after the death of the said Isaac Gober, and prior to the commencement of this suit, the defendant, the United States of America, to the exclusion of the said son of the said Isaac Gober and your cross-complainant, recognized the said Rosa Parr, deceased, as the sole heir of the said Isaac Gober, deceased, and as such permitted the said Rosa Parr to have the possession and use of the said land and

the rents, issues and profits thereof.

17.

That ever since the commencement of this suit and the filing of the said writ of complaint, the defendant, the United States of America, Trustee, has refused to recognize either the said Rosa Parr, now deceased, or her heirs, defendants, herein, or your cross-complainant as the heir or heirs of the said Isaac Gober, and has retained the rents, issues and profits of said land in the possession and control of its said agents.

18.

Since the filing of the said bill of complaint the said Rosa Parr died intestate, leaving surviving her as her only heirs under the laws of the State of Oregon, the defendants, Maggie Ellen Parr, Julia Agnes Parr and Ezra Wallace Farrow, a minor, and Orville D. Townsend, her husband, and since the said death of the said Rosa Parr the said defendants have filed their bill of revivor, praying for a decree of this Court in favor of the said heir of deceased in accordance with the prayer of the original complaint.

19.

That your cross-complainant admits that Maggie Ellen Parr and Julia Agnes Parr and Ezra Wallace Farrow are the heirs under the laws of the State of Oregon of the said Rosa Parr and that the defendant, Orville D. Townsend, was the husband of the said Rosa Parr at the time of her death, but the said defendants were not the heirs under the laws of the State of Oregon, or otherwise of the said

Isaac Gober, deceased, and that the said heirs and the said Orville D. Townsend, by reason of the facts hereinbefore alleged have no right, title or interest in or to the said lands, which were allotted to the said Isaac Gober.

20.

That the rents, issues and profits derived from said lands as there cross-complainants are informed have been in the form of money rents paid by certain tenants whose names are not known at this time to this cross-complainant, but the same has been paid as they are informed and believed, to the various Indian Agents and Special Disbursing Agents of the United States of the Umatilla Indian Reservation, and those rents and profits are now in the hands of the present superintendent and special disbursing agent of the United States of said Umatilla Indian Reservation, to wit: Mr. E. L. Swartzlander, but the amount thereof, or what the present rental of said lands may be, these cross-complainants do not know.

21.

That the defendant, E. L. Swartzlander, is now and ever since the 1st day of July, 1909, has been the Superintendent and Special Disbursing Agent of the defendant, The United States of America, Trustee, for the Umatilla Indian Reservation, and as such agent, he has collected and retained in his possession all the rents, issues and profits accruing from said land.

22.

That the value of the land, allotted to the said

Isaac Gober, as aforesaid, is of the value of about \$7,000.

23.

That your cross-complainant has no plain, speedy or adequate remedy at law.

Wherefore, this cross-complainant prays that the cross-defendants, each and every of them, be required to answer the foregoing cross-bill, but not upon oath or affirmation, the benefit of which is expressly waived, that the cross-complainant be decreed to be the sole heir, under the laws of the State of Oregon, of Isaac Gober, deceased, and his son, who died in infancy, after his said death, and as such heir that cross-complainant is and ever since the death of the said infant son has been the owner of the equitable title to the lands described in the bill of complaint, and in this cross-bill and as such owner was and is entitled to the exclusive possession and use of the said land and to the rents, issues and profits thereof, and that the defendant, The United States of America, trustee, holds the title thereto in trust for this cross-complainant under the trust and conditions of the Act of Congress, approved March 3, 1885, and that the cross-complainant is entitled to an accounting from the said defendant, The United States of America, Trustee, for all the rents, issues and profits received by it from said land since the death of the said Isaac Gober, and that the defendants, herein, Maggie Ellen Parr, Julia Agnes Parr, Ezra Wallace Farrow and Orville D. Townsend, otherwise known as Orville D. Saunders, have no interest in said land, or in the rents, issues and profits

thereof, and that this cross-complainant may have such other and further relief as may be just and equitable.

May it please your Honors to grant unto your oratrix, this cross-complainant, the most gracious writ of subpoena to be issued out of and under the seal of this Honorable Court, directed to the said cross-defendants commanding each and every of them to appear before your Honors in this Honorable Court on a certain day and under a certain penalty therein to be provided to answer the premises, and further to abide by and perform such decree herein as your Honors shall seem meet, and thus your oratrix as in duty bound will ever pray.

C. H. CARTER and

R. J. SLATER,

Solicitor for Cross-complainant.

Cross-bill No. ——. Filed August 17, 1910, *nunc pro tunc* as of June 14, 1910, by order entered August 17, 1910. G. H. Marsh, Clerk.

And afterwards, to wit, on the 17th day of August, 1910, as of and for June 14, 1910, there was duly filed in said court, an Answer to Cross-bill, in words and figures as follows, to wit:

[Answer to Cross-bill.]

*In the Circuit Court of the United States for the
District of Oregon.*

LOUISE COLFAX,

Cross-complainant,

vs.

MAGGIE ELLEN PARR, JULIA AGNES PARR,
EZRA WALLACE FARROW, by G. G.
Lee, Next Friend of the Said Ezra Wallace
Farrow, a Minor, ORVILLE D. TOWN-
SEND, E. L. SWARTZLANDER and THE
UNITED STATES OF AMERICA, Trus-
tee,

Cross-defendants.

ANSWER OF DEFENDANTS UNITED
STATES, E. L. SWARTZLANDER, MAG-
GIE ELLEN PARR, JULIA AGNES
PARR, AND EZRA WALLACE FARROW,
A MINOR, BY G. G. LEE, HIS NEXT
FRIEND, TO PLAINTIFF'S CROSS-COM-
PLAINT.

The defendants Maggie Ellen Parr, Julia Agnes Parr, and Ezra Wallace Farrow, a minor, by G. G. Lee, his next friend, E. L. Swartzlander and the United States, for answer to the Cross-bill exhibited herein say:

I.

These defendants admit that Louise Colfax, cross-complainant herein, is a resident of the Yakima Indian Reservation in the State of Washington, and is

a citizen of the United States of America, and is the same party who was made a defendant in the bill of complaint in that certain suit entitled Rosa Parr, plaintiff, vs. The United States of America, Trustee, and Louise Colfax, defendants.

II.

These defendants admit all the allegations of paragraph I of said Cross-bill, and these defendants admit that the United States of America and said Louise Colfax filed separate answers in said suit entitled Rosa Parr, plaintiff, vs. The United States of America, Trustee, and Louise Colfax, defendants, which separate answer substantially alleged as is averred in paragraph II of said Cross-bill.

III.

These answering defendants admit the allegations contained in paragraphs III, IV, V, VI, VII, VIII, IX and X of said Cross-bill.

IV.

Further answering said Cross-bill, and for answer to paragraph XI thereof, these answering defendants deny that during any of the times mentioned in said Cross-bill, it was the custom, usage or habit of the Indians belonging upon the said Umatilla Indian Reservation, to wit, the Umatilla, Cayuse and Walla Walla tribe of Indians, or any of the said tribe of Indians, for the males and females of said tribes or tribe, to intermarry by merely agreeing to live together and cohabiting as husband and wife and without any other ceremony, and in this connection these answering defendants allege the truth concerning said matter to be that prior to the allotment of

the lands in severalty to the Indians upon said reservation, said Indians were not married according to the laws of the State of Oregon; that prior to said allotment some of the Indians upon said reservation lived together and cohabited as husband and wife by mere agreement, and without any other ceremony whatever, while the members of some of said tribes, pursuant to a custom prevailing among said Indians, were married according to a certain ceremony which consisted of giving presents and feasts by the contracting parties or their parents; that it is true that prior to the allotment of lands in severalty upon said reservation, according to custom, some of the Indians of said reservation, lived and cohabited with a plurality of wives without entering into the marriage relation with any of said wives otherwise than by mutual consent or agreement. But that since said allotment of lands a large majority of the Indians upon said reservation, to wit, about seventy per cent of them, have become married and are married pursuant to the laws of the State of Oregon; that it is true that since the allotment and now some of the Indians upon said reservation still live together and cohabit as husband and wife without being married at all except that they so live together and cohabit by mutual consent, but that the Indians upon said reservation who are now living together and cohabiting as husband and wife without having entered into the marriage relation, as required by the laws of the State of Oregon, do not exceed thirty per cent of the total number of the Indians upon said reservation, and that the re-

mainder of said Indians upon said reservation have been married as required by the laws of the State of Oregon.

That it is not true that the Indians upon said reservation terminate their marriage contract and agreement, or become divorced from each other, by an understanding to separate and cease living together as husband and wife; that it is not true that the Indians living upon said reservation become divorced and annul their marriage relation by the husband or wife deserting his or her consort, or by ceasing to live with each other as husband and wife, without any further act or proceeding; that in this connection these defendants allege that prior to the allotment of lands in severalty to said Indians, that Indians living upon said reservation did, after having consented and agreed to live together as husband and wife, and after living with each other as husband and wife, terminate their said so-called marriage relations at the will of both, or at the will of either of said husband and wife, but that since the allotment of land in severalty to said Indians upon said reservation a large majority of the Indians upon said reservation do not terminate, and do not attempt to terminate, their marriage relations otherwise than as provided by the laws of the State of Oregon.

That the custom, usage, and habits which prevailed among said three tribes of Indians upon said reservation prior to the allotment of land in severalty, pertaining to the marriage status and the custom of living together as husband and wife without entering

into the marriage relation as required by the laws of the State of Oregon, does not now prevail upon said reservation among a majority and among at least seventy per cent of the Indians thereon, and that the custom of terminating and annulling the marriage relation by consent, or at the will of either husband or wife, which prevailed among said Indians prior to the allotment of the lands in severalty, does, since the allotment of lands in severalty upon said reservation, not obtain among a large majority of the Indians thereon, and that the former custom which prevailed among said Indians, or many of them, prior to the allotment of lands in severalty, of living with a plurality of wives, has, since the allotment of lands in severalty, been abandoned by said Indians upon said reservation.

V.

These defendants admit the allegations of paragraph XII and admit that on or about the 12th day of September, 1903, the allotment made to Isaac Gober was approved by the Secretary of the Interior, as alleged in said Cross-bill, and that after said allotment had been made to said Isaac Gober, as alleged in paragraph XIII of said Cross-bill, and on or about the — day of ———, 1895, said Gober, while residing upon the Umatilla Indian Reservation, and said Louise Colfax, pursuant to an understanding had with each other, began to cohabit together and at times lived together as husband and wife, and that they so cohabited and lived together at times until on or about the 24th day of November, 1899, at which time said Isaac Gober died intestate and

left surviving him no children or lineal descendants, except that at the time of the death of the said Gober this cross-complainant was with child by him, and about two weeks after the death of said Gober there was born to said Louise Colfax a son, of which said Isaac Gober was the father; but these defendants deny that said Louise Colfax and said Isaac Gober were married according to the customs then prevailing among the Indians upon said reservation, and deny that there was any custom which at said time prevailed among the Indians upon said reservation pursuant to entering into the marriage relations without being married pursuant to the laws of the State of Oregon, and these defendants deny that said Isaac Gober and said Louise Colfax were ever married, and allege the fact to be that said Isaac Gober and said Louise Colfax, by mutual consent, lived and cohabited together at different intervals between the — day of —, 1895, and until said Isaac Gober died, but that they were not married pursuant to any of the laws of the State of Oregon by any minister of the Gospel, or any minister or priest of any church, or by any officer authorized under the laws of the State of Oregon to perform marriage ceremonies, and were not married at all, unless living and cohabiting together by consent as husband and wife as a matter of law could constitute a marriage.

VI.

And therefore these defendants, further answering paragraph XIV of said Cross-bill, deny that the son of said Louisa Colfax, of which son said Isaac

Gober was the father, became the sole heir of said Isaac Gober, and deny that said child, upon the death of said Isaac Gober, became the owner in fee or otherwise of the land allotted to said Isaac Gober, and deny that said cross-complainant, upon the death of said Isaac Gober, became entitled to a dower interest to the lands allotted to said Isaac Gober.

VII.

Answering paragraph XV of said Cross-bill, these defendants admit that on or about the — day of —, 189—, said male child, the said son of said Louise Colfax, died in infancy, intestate, without any lineal descendants, leaving surviving him his mother, said Louise Colfax, and that his mother, under the laws of the State of Oregon, would be the sole heir of said child, but denies that by reason of the death of said child, either under any law of Congress or any law of the State of Oregon, said Louise Colfax became the owner of the equitable title in fee, or any owner at all, of said land allotted to said Isaac Gober.

VIII.

Answering paragraph XVI, these defendants admit that after the death of said child said Louise Colfax requested the defendant, the United States of America, through its agent, to recognize her as the sole heir of said Isaac Gober and of said child, and as such to allow her to have the usufruct of the lands allotted to said Isaac Gober, but that the defendant, the United States, refused to recognize her, said Louise Colfax, as entitled to the possession, rents and profits of said land allotted to said Isaac Gober, and that the United States, as alleged in paragraph XVI

of said Bill, did recognize said Rosa Parr, now deceased, as the sole heir of said Isaac Gober, and as such permitted said Rosa Parr to have the possession and rents and profits of said land allotted to said Isaac Gober.

IX.

These defendants admit the allegations contained in paragraphs XVII, XVIII, XIX, XX, XXI, XXII of said Cross-bill.

These defendants deny each and every allegation in said Cross-bill not heretofore specifically answered unto, and pray that it may be hence dismissed with costs.

LOWELL & WINTER,

Solicitors for Defendants, Maggie Ellen Parr, Julia Agnes Parr, and Ezra Wallace Farrow, a Minor,
by G. G. Lee, His Next Friend.

JOHN McCOURT,

United States Attorney.

Answer. Filed August 17, 1910, *nunc pro tunc* as of June 14, 1910, by order entered on Aug. 17, 1910. G. H. Marsh, Clerk.

And afterwards, to wit, on the 17th day of August, 1910, as of and for June 14, 1910, there was duly filed in said court, a Replication, in words and figures as follows, to wit:

[Replication of Cross-complainant.]

In the Circuit Court of the United States for the District of Oregon.

LOUISE COLFAX,

Cross-complainant,

vs.

MAGGIE ELLEN PARR, JULIA AGNES PARR,
EZRA WALLACE FARROW, by G. G. LEE,
Next Friend of the Said EZRA WALLACE
FARROW, a Minor, ORVILLE D. TOWN-
SEND, E. L. SWARTZLANDER, and THE
UNITED STATES OF AMERICA, Trustee,
Cross-defendants.

For replication to the answer of defendants herein, comes now the cross-complainant by her solicitors, and reserving to herself the benefit of all proper admissions and disclosures contained in said answer, joining the issues upon said answer and every allegation thereof and this replicant is ready to prove all the matters contained in her cross-bill as this Honorable Court may direct.

FEE & SLATER,

Solicitors for Cross-Complainant.

Replication. Filed August 17, 1910, *nunc pro tunc*, as of June 14, 1910, in accordance, with an order entered on Aug. 17, 1910. G. H. Marsh, Clerk.

And afterwards, to wit, on Wednesday, the 17th day of August, 1910, the same being the 109th judicial day of the regular April, 1910, term of said court—Present, the Honorable ROBERT S. BEAN, United States District Judge presiding—the following proceedings were had in said cause, as of and for June 14, 1910, to wit:

[Decree.]

In the Circuit Court of the United States for the District of Oregon.

No. 3156.

LOUISE COLFAX,

Cross-complainant,

vs.

MAGGIE ELLEN PARR, JULIA AGNES PARR,
EZRA WALLACE FARROW, by G. G. LEE,
Next Friend of the Said EZRA WALLACE
FARROW, a Minor, ORVILLE D. TOWN-
SEND, E. L. SWARTZLANDER, and THE
UNITED STATES OF AMERICA, Trustee,
Cross-defendants.

This cause coming on at this time to be heard upon the motion of cross-complainant, in open court made for a decree in accordance with the decision of this Court rendered herein on the 14th day of June, 1910, the cross-complainant appearing by Fee and Slater, of counsel, and the defendants, Maggie Ellen Parr, Julia Agnes Parr and Ezra Wallace Farrow appearing by Lowell and Winter of counsel, and the

defendants, Orville D. Townsend, E. L. Swartzlander and the United States of America, Trustee, appearing by John McCourt, United States Attorney for the District of Oregon;

And it appearing to the Court from the pleadings and evidence in this cause that Isaac Gober, a mixed blood Indian belonging to the Walla Walla band of Indians located and residing upon the Umatilla Indian Reservation in Umatilla County, Oregon, was on or about the 12th day of April, 1893, allotted as Walla Walla No. 285, and at said time the South Half of the Southwest Quarter (S. $\frac{1}{2}$ SW. $\frac{1}{4}$) of Section Twenty-three (23), Township Three (3) North, Range Thirty-four (34) East Willamette Meridian, containing Eighty (80) acres, was allotted to said Isaac Gober;

And that thereafter the said Isaac Gober and Louise Colfax intermarried upon the Umatilla Indian Reservation in Umatilla County, State of Oregon, under the customs of the Indians residing upon said reservation and lived and cohabited together as husband and wife until on or about the 24th day of November, 1899, at which time the said Isaac Gober died intestate, leaving surviving him no lineal descendants, but died leaving surviving him the said Louise Colfax, who, at the time of the said death of the said Isaac Gober, was with child by him and about two weeks after the death of the said Isaac Gober, there was born to the said Louise Colfax a male child and the son of the said Isaac Gober, deceased, and that by reason of the death of the said Isaac Gober and father of the said male child, the

son of said Isaac Gober, the said male child became and was the sole heir under the laws of the State of Oregon of said Isaac Gober, and by reason thereof, became the owner in fee of the equitable title to said lands, subject only to the dower estate therein of the said Louise Colfax, which dower estate under the laws of the State of Oregon, consists of the right to the use of one-half of the said lands or the use of one-half the rents, issues and profits thereof during the life of the said Louise Colfax;

That thereafter, the said male child, the son of the said Isaac Gober and the said Louise Colfax, died in infancy, intestate and without any lineal descendants, and left surviving him the said Louise Colfax, his mother, as his heir under the laws of the State of Oregon; that by reason of the said death of the said male child, the son of the said Isaac Gober and the said Louise Colfax, the said Louise Colfax became the owner of the equitable title in fee of said lands under the said Act of Congress and the laws of the State of Oregon;

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the cross-complainant, Louise Colfax is, and has been ever since the death of said child of herself and the said Isaac Gober, deceased, the owner of the equitable title in fee of the land described in the complaint, to wit, the South Half of the Southwest Quarter (S. $\frac{1}{2}$ SW. $\frac{1}{4}$) of Section Twenty-three (23), Township Three (3) South, Range Thirty-five (35) East Willamette Meridian, containing eighty (80) acres which were allotted upon the Umatilla Indian Reservation to

Isaac Gober, a mixed blood Walla Walla Indian designated as Walla Walla No. 285, and as such owner is and has been entitled to the rents, issues and profits thereof; and that the United States of America, Trustee, holds the title thereto in trust for the said Louise Colfax, under the trust and conditions of the Act of Congress approved March 3, 1885, providing for the allotment of land upon the Umatilla Indian Reservation to the Indians residing and located thereon; and the defendants herein, Maggie Ellen Parr, Julia Agnes Parr, Ezra W. Farrow and Orville D. Townsend, otherwise known as Orville D. Sanders, have no interest in said land or in the rents, issues and profits thereof; and that the cross-complainant is the owner and entitled to all the moneys in the hands of the clerk of this court received from the defendant, E. L. Swartzlander, as rents, issues and profits of said land, remaining after all costs and expenses of this suit shall have been paid out of the same by the order of this Court, but that the said moneys shall not be disbursed until the further order of this Court.

Done and dated in open court at Portland, Oregon, this 17th day of August, 1910.

R. S. BEAN,
Judge.

Decree. Filed and entered Aug. 17, 1910, *nunc pro tunc* as of and for June 14, 1910. G. H. Marsh, Clerk.

And to wit, on the 2nd day of May, 1910, there was duly filed in said court, Testimony taken by Special Examiner, in words and figures as follows, to wit:

[Commission to Take Testimony.]

In the Circuit Court of the United States for the District of Oregon.

The President of the United States of America, to Mrs. Vida Johnston, of Pendleton, Oregon, Greeting:

KNOW YE, That we, in confidence of your prudence and fidelity, have appointed you special examiner, and by these presents do give you full power and authority diligently to examine upon their corporal oaths, or affirmations, before you to be taken, such witnesses in this cause as shall be produced before you by either of the parties hereto as witnesses on the part of the plaintiff or the defendant in a certain cause now pending undetermined in the Circuit Court of the United States for the District of Oregon, numbered 3156. wherein Rosa Parr is plaintiff and The United States of America is defendant, touching the premises, said testimony to be taken and reported to this Court within thirty days from April 6, 1910.

And we do further empower you to examine, on the same behalf, and in like manner, any other person or persons who may be produced as witnesses before you.

And we do require you, before whom such testi-

mony may be taken, to reduce the same to writing, and to close it up under your hand and seal, directed to the Clerk of the above-entitled court, at the City of Portland, Oregon; and that you return the same, when executed, as above directed, annexed to this writ, with the title of the cause endorsed on the envelope of the commission, into said Circuit Court, with all convenient speed.

Witness the Honorable MELVILLE W. FULLER, Chief Justice of the United States, this 11th day of April, 1910, and in the 134th year of the Independence of the United States of America.

[Seal]

G. H. MARSH,
Clerk.

By J. W. Marsh,
Deputy Clerk.

[Testimony.]

*In the Circuit Court of the United States for the
District of Oregon.*

ROSA PARR,

Plaintiff,

vs.

THE UNITED STATES OF AMERICA, Trustee,
Defendant.

S. A. LOWELL,

Attorney for Plaintiff,

JOHN McCOURT,

United States Attorney, for the Govern-
ment.

[**Testimony of Rosa Parr, Plaintiff, in Her Own Behalf.**]

ROSA PARR, called in her own behalf, being first duly sworn, testified as follows:

Direct Examination.

(Questions by JUDGE LOWELL.)

Q. Are you the plaintiff in this case?

A. Yes, sir.

Q. What is your present name?

A. Rosa Saunders.

Q. What was your name when this suit was begun?

A. Rosa Parr.

Q. Have you recently been married?

A. Yes, sir.

Q. Where do you now reside?

A. Toppenish, Washington.

Q. What is your age?

A. 38.

Q. Where were you born?

A. The Dalles, Oregon.

Q. Did you ever reside on the Umatilla Reservation?

A. Yes.

Q. When?

A. Well, I was raised there.

Q. When did you leave there?

A. Five years ago.

Q. Are you connected by blood with either of the tribes upon the reservation?

A. I belong to the tribe of Walla Walla.

Q. What proportion of Indian blood in your veins?

A. I am a half breed.

Q. Are you an allottee upon the reservation itself?

A. Yes.

(Testimony of Rosa Parr.)

Q. Did you know Isaac Gober in his lifetime?

A. Yes, sir.

Q. What was your maiden name?

A. Rosa Gober.

Q. What relationship, if any, did you bear to Isaac Gober? A. He was my half brother.

Q. Is he living or dead? A. He is dead.

Q. When did he die?

A. He died November the 24th, 1899.

Q. Did you see him after he was dead?

A. Yes, sir.

Q. Where did he die?

A. He died here in Pendleton.

Q. What other brother and sisters did he have at the time of his death?

A. I was the only sister.

Q. Did he have any brother at the time of his death? A. No, sir.

Q. Was his mother living? A. No, sir.

Q. Do you know who his father was?

A. I was told his father's name was Nor-west.

Q. State what you know as to whether or not your mother was married to Nor-west when Isaac was born. What have you been told about that?

A. I was told that she was never married to him.

Q. What conversation, if any, did you ever have with your father about Isaac being his child or not?

A. Well, we had trouble before about the same land. And it was attorney Carsen that wrote to my father and wanted him to appear and he answered me in the letter and told me that he wasn't the father

(Testimony of Rosa Parr.)

of Isaac Gober. That Isaac Gober was only his stepson.

Q. Did you ever have any personal talk with your father about the matter?

A. No, sir, only through letters.

Q. What did you do with the letter you refer to?

A. I brought it in to Mr. Tom Hailey.

Q. And what was done with it then?

A. Why, Mr. Hailey kept it.

Q. Have you ever seen it since? A. No, sir.

Q. How long ago was that?

A. Oh, about seven years ago.

Q. You speak about having trouble over this land before, what do you mean by that?

A. They was a certain party that wanted the land.

Q. Was there a suit in court, is that the trouble you mean? A. Yes, sir.

Q. And was Mr. Tom Hailey your attorney then?

A. Yes, sir.

Q. Was it while this suit was going on that you gave him the letter or about that time?

A. No, it was after the suit was over.

Q. What effort have you made to find the letter?

A. Why, I asked Mr. Lowell to look for it when he went to Portland.

Q. Is Mr. Hailey now living or dead?

A. He is dead.

Q. How old, if you know, was Isaac Gober when your father married your mother? That is, what was the understanding in the family?

A. He was two years old.

(Testimony of Rosa Parr.)

Q. When your brother died did he leave any will?

A. No, sir, not that I know of.

Q. You say that he left no brothers or sisters except yourself. State what you know about your mother's and your father's children. How many there were, when they were born, and when they died.

A. Well, I know they was five. Three of them died before I have any memory.

Q. Did they die in infancy?

A. I couldn't say, I don't know.

Q. What I want to get at, Rose, is whether these dead brothers and sisters, except Isaac, ever lived to grow up.

A. I think they died, all young.

Q. Were you the youngest of the family?

A. I am the next to the youngest.

Q. State whether or not these children died while you were very young.

A. They was two born before me, and one after me.

Q. Did they all pass away before you were old enough to know them or not?

A. Yes, they died before I can remember.

Q. How old was Isaac when he died?

A. I couldn't say, I don't remember.

Q. How much older was he than you?

A. He was seven years older than me.

Q. You were born five years after your mother married your father?

A. Yes.

Q. Now, state what you know as to whether or

(Testimony of Rosa Parr.)

not Isaac left any wife or child.

A. No, sir, he didn't.

Q. There is a woman called Louisa who claims to be the mother of a child by Isaac and who claims to have been married to him according to Indian customs, do you know her?

A. Yes, I know her.

Q. State what Isaac's relations were with her, if you know.

A. Well, he stayed with her off and on, but never lived as man and wife.

Q. You state that he died in '99, in November, how long before he died was it that he first began to stay with Louisa? Off and on?

A. About a year or maybe more.

Q. Would you say two years, possibly?

A. I don't think so.

Q. Where were you living in the years from 1895 up to the time of Isaac's death?

A. I lived about 6 miles from town and straight north from the Agency.

Q. On the Umatilla Indian Reservation?

A. Yes.

Q. What was your name then?

A. Rosa Parr.

Q. And you were living with your husband in those days?

A. Yes, sir.

Q. Where did Isaac live during that period?

Isaac Gober? A. He lived everywhere.

Q. How frequently did you see him during that period?

(Testimony of Rosa Parr.)

A. Quite often he would come and visit me.

Q. Did he maintain any home of his own?

A. No, sir, he did not.

Q. Did he have an allotment on the reservation?

A. Yes, sir.

Q. Did he have any house on that?

A. He had a little old shack.

Q. State whether or not he lived there.

A. No, sir.

Q. Tell what you know about his living in Pendleton during those years, if at all.

A. Yes, he stayed in Pendleton most of the time.

Q. Where was his stopping-place in Pendleton, if you know?

A. He stayed the biggest part of the time with John Damon.

Q. Where did he die?

A. Back of John Damon's saloon.

Q. State whether or not he had a room there.

A. Yes, he did.

Q. Was there ever any ceremony or marriage or anything of the kind ever performed between Isaac and Louisa?

A. No, sir, there never was.

Q. Now state, if you know, whether there was any child ever born to the woman during the time that Isaac was staying with her off and on?

A. There was a child born six months after he died, which she said was his.

Q. State what you know, if anything, about the relations of the woman with other men, whether or not other men were staying with her off and on.

(Testimony of Rosa Parr.)

A. I couldn't say positively—but I heard that she was staying with other men.

Q. Was that during the period that Isaac was stopping with her from time to time?

A. Yes, sir.

Q. Is that child living or dead?

A. It is dead.

Q. When did it die?

A. It died when it was eleven months old.

Q. State whether or not there was any other child born to this woman during the period that Isaac was stopping with her off and on.

A. Not that I know of.

Q. Was Isaac ever married to any woman?

A. Yes, sir.

Q. To whom? A. To Anna Woodward.

Q. How long ago was that, before or after the allotment? A. It was before the allotment.

Q. And state whether or not he was divorced from the Woodward woman before the allotment?

A. Yes, he was divorced before the allotment.

Q. By the courts of Oregon?

A. Yes, sir.

Q. Now, were there any children born of that union? A. Yes, sir, there was, two.

Q. Are they living or dead?

A. They both died.

Q. State whether or not they died in childhood.

A. One was two years old, the other one died an infant.

(Testimony of Rosa Parr.)

Cross-examination.

(By Mr. McCOURT.)

Q. Did Louise live in that shack on Isaac Gober's allotment at any time? A. No, sir.

Q. Did Isaac commence living with Louise upon the Umatilla Reservation or upon the Yakima Reservation? A. On the Umatilla.

Q. Didn't he bring her over from Yakima?

A. Not that I know of.

Q. Wasn't she recognized generally among the Indians as the wife of Isaac Gober?

A. Perhaps she was among the Indians.

Q. Well, you were living out there among the Indians, you knew what was going on, didn't you?

A. I lived on the reservation, but not among the Indians.

Q. You were then the wife of Joseph Parr?

A. Yes, sir.

Q. Do you remember in 1907 of attending an Indian counsel on the reservation?

A. I don't remember that.

Q. Well, do you remember taking Mary Parr and Charley Nor-west to establish your right to the land?

A. Yes, sir.

Q. You remember Leo Sampson was there?

A. Yes, sir.

Q. You remember that both Mary Parr and Charley Nor-west made an affidavit before the agent?

A. Yes, sir.

Q. You were the interpreter, were you not?

A. Yes, sir.

(Testimony of Rosa Parr.)

Q. You remember that both Mary Parr and Northwest stated that Louise was the wife of Isaac Gober by Indian customs?

A. I don't exactly remember what they did say.

Q. Let me hand you this paper and see if I can refresh your memory. (Hands paper.)

A. Well, it says here that he was married, but I don't think that was mentioned there that day.

Q. Don't you remember that you explained the affidavits to them after the affidavit was written?

A. I never read it to them?

Q. Didn't you sign it down at the bottom there?

A. Maybe I did, but I never read it to them.

Counsel objects as immaterial.

Q. You took these parties there to establish your right to the land? A. Yes, sir.

Q. And after they had given their testimony the Indian agents afterward refused to recognize your interest in the land? A. Yes, sir. A. *Yes, sir.*

We offer the affidavit above mentioned for the purpose of showing what occurred at the office of the Superintendent of the Umatilla Reservation at that time and the basis upon which the Indian Department refused to recognize title to the lands in question, in Rosa Parr, also for the purpose of showing the understanding had among the Indians as to the relationship between Isaac Gober and Louise.

Judge LOWELL.—Objected to as irrelevant and immaterial.

Affidavit received and marked Defendant's Exhibit "A."

(Testimony of Rosa Parr.)

Q. Louise commenced claiming this land as the widow of Isaac Gober, immediately or shortly after his death, did she not?

A. Yes, it was shortly after his death. I mean that is the first time.

Q. And she brought a suit in the State courts against you regarding this land?

A. Yes, sir.

It is stipulated between the parties by their counsel that Louise brought a suit in the State's Court for Umatilla County, Oregon, on the 1st day of March, 1902, against the plaintiff in this case and others, and thereafter, on the 18th day of December, 1905, Louise was adjudged to be in default in said cause for want of a reply, therein, whereupon, a decree was entered judging the plaintiff, Rosa Parr, to be the owner of the land involved in this suit and that she was the sole and only heir at law of Isaac Gober, deceased.

(Questions by Mr. SLATER.)

Q. Were you acquainted with Louise while Isaac was going with her? A. Yes, sir.

Q. Did not Isaac take Louise to your house and keep her there for a while, as his wife?

A. He brought her there about two days before he died.

Q. How long did she stay there?

A. She stayed with me four months after Isaac died.

Q. What did Isaac say to you, if anything, at that time about Louisa?

(Testimony of Rosa Parr.)

A. He never said anything.

Q. What did he say he brought her to your house for?

A. I asked him if it was his wife and he said, "Oh, just for a little while."

Q. Did he stay there with her?

A. I think he did.

Q. Did they occupy the same room?

A. They slept outside, I guess.

Q. Did they sleep together?

A. I couldn't swear to that, for I never seen them.

Q. They did not occupy a room in your house?

A. No, sir.

Q. Was there a tent in the *year*, or anything of that kind? A. No, sir.

Q. Was Louisa at your house when you first heard of Isaac's death? A. Yes, sir.

Q. You and Isaac are children of the same mother, are you not? A. Yes, sir.

Q. When you went to the Indian agent at the time referred to in Defendant's Exhibit "A," the wife referred to in that exhibit by the witnesses was this same Louisa, was it not? A. Yes, sir.

Q. And the child referred to was this same child of this Louisa, was it not? A. Yes, sir.

Redirect Examination.

Q. Who was agent at the time this affidavit was made which has been offered here?

A. Mr. Edwards.

Q. Who wrote the affidavit?

A. I don't remember, I think it was his clerk.

(Testimony of Rosa Parr.)

Q. Do you remember who dictated it?

A. No, sir.

Q. After the State court gave you this land how long did you hold it before the agent refused to let you retain it?

A. Well, I had it for a time after my brother died till we bought this.

Q. Well, who was the agent that refused to let you have the ranch any longer?

A. Mr. Edwards was.

Q. What was your father's given name?

A. John Gober.

Q. Where does he live now?

A. Nespleam, Washington.

Q. And what was your mother's maiden name?

A. Maggie Russie.

Q. Was your mother ever married before she married John Gober? A. No, sir.

Q. You stated that Isaac was married to the Woodward girl, *was ever* married to anybody else?

A. No, sir.

Witness excused.

[Testimony of Frank Parr, Sr., for Plaintiff.]

FRANK PARR, Sr., being called on behalf of the plaintiff and being first duly sworn testified as follows:

Direct Examination.

(Questions by JUDGE LOWELL.)

Q. How old are you? A. Don't know.

Q. About how old? A. About 70.

Q. Where do you live?

(Testimony of Frank Parr, Sr.)

A. I live right towards the agency.

Q. How long have you lived on the Umatilla reservation? A. About 25 years.

Q. Do you know a man by the name of John Gober? A. Yes.

Q. How long have you known him?

A. I have known him since down the Willamette.

Q. Fifty years ago?

A. Something like that.

Q. Did you know Maggie Russie? A. Yes.

Q. How long did you know her before she died?

A. I have known her since down the Willamette too.

Q. Is she living or dead? A. She is dead.

Q. State whether or not John Gober married Maggie Russie? A. They were together.

Q. When did you first see them together?

A. In Walla Walla.

Q. How long ago?

A. I don't remember about how long it has been, a long while ago.

Q. Where did John Gober and the woman come from when you first saw them together?

A. From the Willamette.

Q. What, if anything, did they say about just having been married? A. I don't remember.

Q. Did you know Isaac Gober? A. Yes.

Q. How old was he at the time you saw John Gober and the woman in Walla Walla?

A. I couldn't say.

Q. About two or three years old? A. Yes.

(Testimony of Frank Parr, Sr.)

Q. Who was understood among the French people to be the father of Isaac Gober?

A. Nor-west.

Q. What Nor-west, Frank Nor-west or Charley Nor-west? A. Don't know.

Q. How long did John Gober and Maggie Russie live after you knew them up here?

A. I don't know.

Q. Did they live on this reservation awhile?

A. I don't remember that.

Q. Did you ever see them after they came to Walla Walla? A. No.

Q. What is your wife's name?

A. Mary Parr.

Q. Is she able to come in here as a witness to-day?

A. She can't. Tried to get her this morning.

Q. Is she sick abed?

A. She walks around but then she is too weak.

Q. Could she give the testimony if we went out to her place? A. Yes.

Cross-examination.

(By Mr. SLATER.)

Q. Who was Maggie Russie's father?

A. Gus Russie.

Q. Was he a white man or a mixed blood?

A. He was a man from the Red River.

Q. Was he part Indian?

A. Half breed from Red River.

Q. Who was Maggie's mother?

A. One of the Nor-west.

(Testimony of Frank Parr, Sr.)

Q. What was she?

A. Her father was Iroquois and her mother was an Indian woman.

Q. Was she a full blood Indian woman?

A. Yes.

Cross-examination.

(By Mr. McCOURT.)

Q. What relation was the mother of Maggie Russie to the Nor-west who was said to be the father of Isaac Gober? A. I don't know.

Q. Were they any relation?

A. I don't know.

Q. Where did this Nor-west live, that you speak about as the father of Isaac Gober?

A. I don't know.

Q. Was he a white man or an Indian?

A. I never saw him, just hear of his name.

Q. Do you know Charley Nor-west?

A. Yes.

Q. He is not the man is he? A. No.

Q. Did you know Frank Nor-west? A. No.

Q. Do you know whether he was the man or not?

A. No.

Q. You supposed when you first saw Maggie Russie and John Gober at Walla Walla that Isaac Gober was their child, did you not?

A. I didn't know.

Q. Did you know John Gober down in Willamette? A. Yes.

Q. How long had you been up here when you first saw them at Walla Walla?

(Testimony of Frank Parr, Sr.)

A. I had been quite awhile, I don't remember.

Q. Did they live near you in Willamette?

A. No.

Q. Did you know Maggie in Willamette?

A. Yes.

Q. Did she have this child, Isaac Gober when you knew her in Willamette? A. No.

Witness excused.

[Testimony of Frank Gagnon, for Plaintiff.]

FRANK GAGNON, called in behalf of the plaintiff being first duly sworn, testified as follows:

Direct Examination.

(Questions by Judge LOWELL.)

Q. Where do you live?

A. I live in Toppenish.

Q. Did you formerly live in this county?

A. Yes, I lived here about 25 years.

Q. What is your age? A. 55.

Q. Did you know Isaac Gober in his lifetime?

A. Yes, sir.

Q. How long did you know him?

A. About thirty years.

Q. When you lived in this county did you live on the reservation? A. Yes, sir.

Q. Are you of French descent?

A. Yes, sir.

Q. Of what blood was Isaac Gober?

A. Well, I should judge he was between a half breed and an Indian.

Q. Well, do you mean by that that he was half

(Testimony of Frank Gagnon.)

blood Indian and half blood white?

A. No, his father was supposed to be an Iroquois and his mother a half breed.

Q. Did you know John Gober when he lived in this county, Rosa Parr's father? A. Yes, sir.

Q. How long did he live here?

A. That, I couldn't tell you, he lived here quite awhile.

Q. State whether or not he was a Frenchman, also. A. He was a half breed French.

Q. Did you know his wife Maggie?

A. Yes, sir.

Q. How long did you know her?

A. About the same time as I known him.

Q. Were they recognized as husband and wife by the people on the reservation?

A. Yes, I know them in Walla Walla first place.

Q. Did they live together as husband and wife there? A. Yes, sir.

Q. Do you know Rosa Parr, now Rose Saunders?

A. Yes, I know her since she was a little girl.

Q. Is she the child of John and Maggie?

A. I suppose so, she the only child they have.

Q. She was recognized as their child among the people? A. Yes, sir.

Q. Did you know the man Nor-west who was reputed to be the father of Isaac Gober? A. No.

Q. Was Isaac ever married? A. Yes, sir.

Q. To whom, if you know?

A. Annie Woodward.

Q. State whether or not he was afterwards

(Testimony of Frank Gagnon.)

divorced from her by the State courts.

A. I wasn't here at the time but he told me he was divorced.

Q. Were you here from 1895 to 1900?

A. I couldn't tell you that.

Q. Well, say 15 years ago did you live here?

A. Yes.

Q. And were you here ten years ago?

A. Yes, sir.

Q. Did you know Isaac Gober during the last years of his life? A. Yes.

Q. How intimately did you know him the last two years of his life?

A. I seen him pretty near every time I came to town.

Q. How often was that?

A. Well, that was once or twice a week.

Q. Where was he living then?

A. Well, I don't know. He lived everywhere, I guess.

Q. Did he have any established home during those years? A. Not that I know of.

Q. Did you know a woman by the name of Louise, that Isaac stayed with part of the time?

A. Yes, sir.

Q. State what you know about his stopping with her, if at all.

Q. Why, I have seen them several times together.

Q. Did they have any home together anywhere?

A. I don't know.

Q. Do you know where his allotment is?

(Testimony of Frank Gagnon.)

A. Which Isaac?

Q. Yes. A. Yes.

Q. Did he have any home upon that allotment during the last few years of his life?

A. He had a little log house there.

Q. Did he live in it?

A. I never knowed that he ever lived in it.

Q. When you used to come to town in those days where did you usually see Isaac?

A. Well, mostly around his father in law.

Q. You mean John Damon? A. Yes.

Q. When you say father in law, you mean step-father, don't you?

A. Yes, that is what I mean.

Q. John Damon married Isaac's mother?

A. Yes.

Q. Now, state if you can, whether or not Isaac lived there at Damon's place, had a room there in those last years of his life, that is, a room in the back part of the saloon?

A. Well, I couldn't say whether he lived there.

Q. You don't know whether he did or not?

A. No.

Q. You say that—saw him with the woman from time to time? State where you saw them together.

A. Here in town.

Q. On the street or where?

A. On the street.

Cross-examination.

(By Mr. SLATER.)

Q. Do you know whether or not this Louisa ever

(Testimony of Frank Gagnon.)

occupied the room back of the saloon?

A. No, sir, I don't know.

Q. What, if anything, did Isaac ever say to you about this woman Louisa?

A. Well, he told me that he was going to get her.

Redirect Examination.

Q. When did he tell you that, Frank?

A. Here in town.

Q. How long before he died?

A. I couldn't say how long before he died.

Q. Where was she at that time?

A. When he died?

Q. No, when he told you that?

A. She was in town.

Q. Do you know whether she was living with some other man, at that time, when he told you that?

A. Don't know.

Q. Well, now, should you say it was a year before he died, that he told you that, or six months?

A. I couldn't say how long they lived together.

Q. You never saw them together except here in town, did you?

A. Yes, I seen them here in Yakima.

Q. How many times did you see them together in Yakima?

A. Just one season in the hop picking time.

Q. Good many Indians gather there in hop picking, don't they?

A. Yes, thousands of them, I guess.

(Testimony of Frank Gagnon.)

Recross.

(Questions by Mr. SLATER.)

Q. Were they living together there when you saw them in Yakima?

A. I don't know, I couldn't tell as to that.

Q. Were they working in the hop fields?

A. I suppose they was but they was not in the same yard where I was.

Q. Did you have any conversation with Isaac at this time about Louise? A. No.

Witness excused.

[Testimony of Fred Parr, for Plaintiff.]

FRED PARR called on behalf of the plaintiff being first duly sworn, testified as follows:

Direct Examination.

(Questions by Judge LOWELL.)

Q. What is your name, age, residence and occupation?

A. Fred Parr, 39 next birthday. Live on the Umatilla Reservation. Farmer.

Q. What nationality are you?

A. I am mixed blood.

Q. French and Indian? A. Yes, sir.

Q. What proportion French?

A. Why, about three-quarter, I guess.

Q. You speak French? A. Yes, sir.

Q. How long have you lived upon the Umatilla Reservation?

A. I have lived off and on since '83.

Q. Did you know Maggie Gober, Rose Parr's

(Testimony of Fred Parr.)

mother? A. Yes, sir.

Q. You are a son in law of Rose, are you not?

A. Yes, sir.

Q. State whether or not you are acquainted with the Indians and mixed bloods generally upon the reservation?

A. Yes, I am pretty well acquainted with them.

Q. You have been so acquainted since '83?

A. Yes, sir.

Q. Did you know Isaac Gober in his lifetime?

A. Yes, sir.

Q. How many years were you acquainted with him? A. Since we first come here.

Q. Did he have some French blood in his veins, too? A. He had very little I guess.

Q. What was the general reputation among the people up on the reservation and mixed bloods as to who Isaac Gober's father was?

A. I have heard the old folks say often that he was a Nor-west but I never knowed what Nor-west.

Q. Are the Nor-west people French and Indian mixed, or what is that blood?

A. I think they are Iroquois.

Q. Do you know John Gober, Rose's father?

A. Yes, I got acquainted with him last fall.

Q. Where does he live?

A. In Nespealam, Washington.

Q. What relationship was there between Rose, the plaintiff, in this case and Isaac Gober?

A. Half brother.

(Testimony of Fred Parr.)

Q. That is, Isaac was her half brother?

A. Yes.

[Stipulation Re Decree of Divorce, etc.]

It is hereby stipulated and agreed in this connection, by and between the plaintiff the United States of America, Trustee, and Louisa, who claims to be the widow of Isaac Gober, deceased, plaintiff appearing by S. A. Lowell, her attorney, the Government by John McCourt, United States Attorney for the District of Oregon, and Louisa by Fee and Slater, her attorneys, that a decree of divorce was duly made and entered in the Circuit Court for the State of Oregon of Umatilla County in the year 1882, whereby, the bonds of matrimony then existing between John Gober and Maggie Gober were forever dissolved. And that the Complaint therein alleges that upon that date there was but one child living the fruit of said union, to wit: Rosa Gober.

And it is further stipulated and agreed that said Rosa Gober is the plaintiff in this case.

And it is further agreed as shown by the record in said divorce proceedings that said John Gober and Maggie Gober intermarried at The Dalles, Oregon, about the year 1866.

Q. How intimately did you know Isaac Gober in the last years of his life?

A. I seen him frequently, two or three times a week.

Q. Did you know a woman by the name of Louisa whom he had some relations with? A. Yes.

Q. State what you know about those relations, if anything.

(Testimony of Fred Parr.)

A. Well, I don't know much about it, I have never knowed them to be as man and wife.

Cross-examination.

(By Mr. SLATER.)

Q. What do you mean by saying that you never knew them as being as man and wife?

A. Because I never knowed them to be married.

Q. Did you know that they were living in cohabitation together? A. No.

Witness excused.

[Testimony of Rosa Parr, the Plaintiff (Recalled in Her Own Behalf).]

ROSA PARR, recalled on her own behalf, testified as follows:

Direct Examination.

(Questions by Judge LOWELL.)

Q. The complaint alleges that the Government of the United States denies your right to Isaac Gober's allotment and withholds it from you. State the facts regarding that.

A. Yes, the agent is the one that took it away from me.

Q. Which agent? A. Mr. Edwards.

Q. Do you mean the agent upon the Umatilla Indian Reservation? A. Yes, sir.

Q. How long has it been since you have received any of the rents from the land?

A. I think it was just before Edwards was agent.

Q. The last rent you received was just before Edwards came in, was it? A. Yes, sir.

[Stipulation Re Allotment of Land, etc.]

It is hereby stipulated by and between the plaintiff herein, The United States of America, Trustee, and Louisa who claims to be the widow of Isaac Gober, by their attorneys herein appearing, that the allotment of lands in severalty to the Indians upon the Umatilla Indian Reservation including the allotments made to the plaintiff herein and to Isaac Gober were made April 24, 1891, under authority from the Secretary of the Interior bearing that date and that the schedule thereof was approved by said official Feb. 12, 1893, and that thereafter declaration of trust sometimes called trust patents were issued bearing date September 16, 1899. And that a copy of said declaration of trust covering said Isaac Gober allotment is as follows:

[Declaration of Trust.]

Walla Walla. 285.

THE UNITED STATES OF AMERICA.

To all whom these presents shall come, GREETING:

WHEREAS, There has been deposited in the General Land Office of the United States a schedule of allotments of land, dated March 27, 1893, from the Acting Commissioner of Indian Affairs, approved by the Acting Secretary of the Interior April 12, 1893, whereby it appears that under the provisions of the Act of Congress approved March 3, 1885 (23 Stats. 340), Isaac Gober ————— or —————, an Indian residing upon the Umatilla Reservation Oregon, has been allotted the following, described land, viz.: The South half of the South West quarter

of section twenty-three in Township three North of Range thirty-four east of the Willamette Meridian in Oregon, containing eighty acres.

NOW, KNOW YE, That the United States of America, in consideration of the premises and in accordance with the provisions of the first section of said Act of Congress of the 3rd March, 1885, HEREBY DECLARES that it does and will hold the land thus allotted (subject to all restrictions and conditions contained in said first section) for the period of twenty-five years, in trust for the sole use and benefit of the said Isaac Gober ————— or —————, or in case of his decease, for the sole use of his heirs, according to the laws of the State of Oregon, and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs, as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever.

IN TESTIMONY WHEREOF, I, William McKinley, President of the United States of America, have caused these Letters to be made Patent and the Seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington, this 16th day of September, in the year of our Lord one thousand eight hundred and ninety-nine, and of

the Independence of the United States the one hundred and twenty-fourth.

By the President, WILLIAM McKINLEY.

By F. M. McKEAN, Secretary.

[Seal]

C. H. BRUSH,

Recorder of the G. L. O.

Recorded Vol. 2, p. 67.

—and that all the others were in date, form and substance the same.

[Statement by Judge Lowell.]

Judge LOWELL, attorney for plaintiff in the case, having been sworn at his own request, makes the following statement:

Regarding the letter which plaintiff testifies she gave to Judge T. G. Hailey in his lifetime, I have made, at her request, a thorough search among the papers left by Judge Hailey pertaining to this case and the kindred case of Ellen Parr vs. John Damon, and have asked the firm of Chamberlin, Thomas and Kramer of Portland, Oregon, of which firm Judge Hailey at the time of his death was a member to send me all the papers in their possession bearing upon these cases, and they advised me that they have done so; and I have been unable to locate the letter.

Judge Hailey and I dissolved partnership in December, 1905, and his papers at that time were packed up and later moved to Portland, and I presume this letter was then either lost or destroyed. I am unable to find any tract of it.

[**Testimony of Louise, Defendant, in Her Own Behalf.**]

LOUISE, called on her own behalf, being first duly sworn, testified as follows:

Direct Examination.

(Questions by J. R. SLATER.)

Q. What is your name? A. Louisea.

Q. How old are you? A. Don't know.

Q. About how old are you?

A. She says she can't say hardly, but she thinks between thirty and forty.

Q. Are you a full blood Indian woman?

A. I am a full blood Indian.

Q. Where were you born?

A. At Yakima.

Q. To what band or tribe of Indians do you belong? A. I belong to the tribe I was born.

Q. Was that the Yakima band of Indians?

A. Yes.

Q. Did you know Isaac Gober? A. Yes.

Q. Did you ever live with Isaac Gober as his wife? A. Yes.

Q. When did you commence to live with him as his wife?

A. About—near as I can remember it is about 13 years ago.

Q. How long was it before Isaac died?

A. I lived with him for four years.

Q. Where were you when you commenced to live with him?

A. I first met him here on the Umatilla Reservation.

(Testimony of Louise.)

Q. What did he say to you about being his wife?

A. When I first met the man he requested me to be his wife and that he would have me for his wife as long as he lived or as long as I lived.

Q. What did you say to him?

A. I told him that I was willing to become his wife if he meant it for sure.

Q. What did he say to that?

A. He then told me that he was willing to have me for his wife and then I also said that I was willing to have him for my husband.

Q. Did you and Isaac Gober then commence to live together as husband and wife? A. Yes.

Q. Was Isaac part Indian? A. Yes.

Q. Was he living at that time upon the Umatilla Reservation?

A. Yes, he was on the Umatilla Reservation at that time. At the place where the Indians celebrate their 4th of July.

Q. Was he at that time a member of the Walla Walla band of Indians?

A. Yes, I knew he was.

Q. Was that the way that the people that belong to the Walla Walla band of Indians got married at that time?

A. At that time some of the Walla Walla Indians got married in that way and some of them were legally married.

Q. Where did you go to with Isaac to live with him?

A. We went to a place where the Indians used to

(Testimony of Louise.)

celebrate the 4th of July. We went to man's house who is here now.

Q. Whose house was it that you went to?

A. He-yem-ke-pe.

Q. Did you ever go with Isaac to the house of Rosa Parr?

A. Yes, I went to that house once and lived with them there for a short while.

Q. How long was that before Isaac died?

A. This was four years prior to the death of my husband.

Q. Did you have any children by Isaac Gober?

A. We had two children.

Q. Are they living or dead?

A. One of the children died before the father and the other after the father.

Q. When was the youngest child born?

A. My youngest child was born about two weeks after the death of his father.

Q. Where were you when the youngest child was born?

A. At that time I was stopping at He-yum-ke-pe's house.

Q. What is the English name of He-yum-ke-pe?

A. I don't know, his name very well all I know they call him Moses.

Q. Is he living now on the Umatilla Reservation?

A. Yes, he is living there.

Q. Were you living at Moses' house when your husband died?

A. No.

Q. Where were you?

(Testimony of Louise.)

A. We came to town one day and he was feeling a little sick and we was stopping here in town and he died here in town. And I was with him at the time.

Q. When you commenced to live with Isaac Gober and continued to live with him as his wife was that before or after the allotments on the Umatilla Reservation?

A. That was prior to the allotment that I commenced to live with him.

Q. Had not Isaac Gober already been allotted when you commenced to live with him?

A. Yes, he had been allotted.

Q. You did not mean to say that Isaac had not been allotted when you first married him?

A. I meant to say that the Indians had their allotments just about the time I commenced to live with him.

Q. Isaac already had his land, had he not?

A. Yes, he had already his allotment.

Q. Have the agents of the Umatilla Indian Reservation ever paid you any of the rent money coming from Isaac's land? A. No, never.

Q. Have the agents ever recognized you as being the widow of Isaac Gober?

A. Yes, the Indian agents recognize me as the widow of Isaac Gober.

Q. Have they ever allowed you to take possession of his land?

A. They told me that I ought to have possession of that allotment.

(Testimony of Louise.)

Q. Why did they not give it to you?

A. The reason why the Indian agent would not allow me to do as I pleased with this allotment, is because that a sister of Isaac Gober was claiming the land at the time.

Q. Have you married since Isaac died?

A. No. I never married again after Isaac died.

Q. Hasn't she got a husband now?

A. Why, I am married now and I have a husband.

Q. What is his name?

A. Schuyler Colfax.

Q. Where do you live at the present time?

A. At Yakima.

Q. Is Schuyler Colfax an Indian? A. Yes.

Q. Were you married to him according to the Indian customs or according to the white man's way?

A. I am married to this man in the white man's way.

Cross-examination.

(Questions by Judge LOWELL.)

Q. How many years ago was it that you first came to the Umatilla Reservation from Yakima?

A. I don't remember how many years it is but I think that it is 19 years.

Q. How soon after you came here did you and Isaac begin to live together?

A. I couldn't say. I don't remember.

Q. How old were you when you first came to the Umatilla Reservation?

(Testimony of Louise.)

A. I don't know how old I was at the time.

Q. Were you a young woman?

A. I don't know.

Q. Were you grown up? A. Yes.

Q. Now, how many snows was it after you came before you and Isaac began to live together?

A. This was about three years before I lived with him.

Q. How many snows did you live with him?

A. Four years.

Q. And how many snows has Isaac been dead? Ask her if she remembers whether he died in the fall of 1899 or not? A. About 12 years ago.

Q. Can you reckon time?

A. The witness remains silent.

Q. After you came to the Umatilla Reservation did you live with any other man according to Indian customs, except Isaac Gober?

A. I wasn't married to any other man according to Indian customs and the husband that I mentioned a short while ago was the only man that I lived with according to Indian customs.

Q. Well, didn't you live with some men on the Umatilla Reservation beside Isaac?

A. No, I didn't live with any other man here on the reservation, but I only had one husband here.

Q. Where did you and Isaac make your home after you and he began to live together?

A. At He-yum-te-pe's place.

Q. How long did you live there?

A. We live there most of the time.

(Testimony of Louise.)

Q. Is that man here in the room?

A. Yes, he is around here.

Q. What is his English name? A. Moses.

Q. Moses Johnson? A. Yes.

Q. Did you and Isaac live in Pendleton part of the time?

A. No, most of the time we lived at He-yum-te-pe's place but we used to come to town sometimes.

Q. Did you ever live with Isaac in Pendleton, over here in the back room of John Damon's saloon?

A. No, never, but we used to come to town as everybody does.

Q. Did you live four snows at Moses Johnson's place?

A. Yes, we lived there up to the time he died.

Q. Did you ever live with Ed Chapman?

A. No.

Q. Do you know an Indian by the name of Francis? A. No, I don't know him by that name.

Q. You lived at Moses Johnson's all the time?

A. Yes.

Witness excused.

[Testimony of Moses Johnson, for Defendant.]

MOSES JOHNSON, called on behalf of the defendant, being first duly sworn testified as follows:

Direct Examination.

(Questions by Mr. SLATER.)

Q. State your name. A. Moses Johnson.

Q. How old are you? A. Oh, about 39.

Q. Where do you live?

(Testimony of Moses Johnson.)

A. The other side of the agency.

Q. On the Umatilla Reservation?

A. Yes, sir.

Q. Which band of Indians do you belong to?

A. Belong to the Cayuse.

Q. Are you acquainted with the woman who was just upon the witness-stand before you?

A. Yes.

Q. Did you know Isaac Gober in his lifetime?

A. I used to know him.

Q. Did Louisa ever live at your house, with Isaac Gober?

A. Well, they used to come there, stay there, a little while.

Q. For how long did that continue?

A. They used to visit my place quite often.

Q. For how many years did that visiting continue?

A. I don't remember for certain but I think it is three or four years.

Q. Were Louisa and Isaac living together at that time as husband and wife, according to the custom of the Indians upon the Umatilla Reservation?

A. Yes, there were living together as husband and wife according to Indian custom.

Q. Did they live that way together until Isaac died?

A. I think that they lived that way up to the time that Isaac died.

Q. During that time did Louisa have any children by Isaac, that you know of?

(Testimony of Moses Johnson.)

A. I only remember that they had one child and I don't remember the other.

Q. What became of that child?

A. It died.

Q. Was that the one that was born and died before Isaac died?

A. That child that I knew died after the death of its father.

Q. Was it born before Isaac died?

A. I think that is the child born after its father died.

Cross-examination.

(By Judge LOWELL.)

Q. You and Isaac Gober were schoolmates, weren't you? A. Yes.

Q. When he came to your house did he come to live or to visit?

A. When they got married why, they came there to my house. They came to live there.

Q. Well, how long did they stay there the first time?

A. I don't know just how long they remained there but I think they remained about three months.

Q. How long was that before Isaac died?

A. I don't remember. I couldn't state how long before that, that was.

Q. Where did they go to when they left your house?

A. After they left my house I think they went to his sister's place. But I am not certain as I didn't follow behind them to see where they had went.

(Testimony of Moses Johnson.)

Q. Did they ever come back to your house again?

A. Yes, they used to come there after that and stay with me for a short while, then they would go away again.

Q. Did they ever have a home of their own, while you knew them?

A. No, I have never known that they had a home of their own, but her mother had a house about opposite the Indian agency and they would go to live there, sometimes.

Q. How much did they live there?

A. I don't hardly know how long they used to stay at her mother's place but I think that one time they remained all through the winter.

Q. Where did Isaac die?

A. I don't know anything about where he died as I was in Wallowa that summer.

Q. Was that ten years ago last fall that you were in Wallowa?

A. I don't know, I couldn't state how many years ago that was, as I used to visit Wallowa nearly every year.

Q. Did you hear that Isaac was dead when you got home?

A. Yes, I learned from the Indians that Isaac had died.

Q. Now, how many years ago was that?

A. I couldn't say for certain, but as near as I can guess I think that this was about 18 or 19 years.

Q. You think Isaac Gober died 19 years ago?

A. I am not certain but I am just guessing.

(Testimony of Moses Johnson.)

Q. Well, you are guessing at all of your testimony are you not?

A. I am not guessing of this statement I make, but where I don't remember for sure I say that I don't know for sure, and whenever I know the facts that I state just as I know.

Q. Do you have any idea of time at all?

A. I remember for a while, and then finally I forget.

Q. You don't remember for a matter of fact, how long before Isaac died that he and this woman visited you, do you?

A. I don't know hardly and then I wouldn't say for sure but then I think about three years.

Q. You know just about as much about that as about when Isaac died, don't you?

A. I stated a short while ago that I wasn't sure that he died that year.

Q. Well, you are not sure of anything, are you?

A. Yes, of course, I forget some what happened in those days and what I knew. I would say that I know this as a fact, but whenever it comes that I don't know for sure I say that I think that this happened about that time.

Q. Do you know what year this is?

A. 1910.

Q. Well, now, if you know what year this is, don't you know what occurred ten years ago, when it affected your own friends?

A. Well, I did know but I did not try to remember the year in which he died as I never thought that

(Testimony of Moses Johnson.)

I would be questioned about his death.

Q. Well, you are just as sure as you are of the length of time that he visited you before he died, are you not?

A. Yes.

Redirect Examination.

(Questions by Mr. SLATER.)

Q. Did Isaac Gober ever go with you into the Wallowa?

A. Yes, when they first were married they came to my place and it was the same summer that he came to Wallowa with me and after we came home he then left me and went across the river.

Q. Did Louisa go with him to Wallowa?

A. Yes, they both went with me.

Q. How long were you gone on that trip?

A. I think about three or maybe four months.

Q. Were Louisa and Isaac together all that time and living together as husband and wife?

A. Yes, I used to think that they were living as husband and wife.

Witness excused.

[Testimony of Phillip Minthorn, for Defendant.]

PHILLIP MINTHORN called in behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. SLATER.)

Q. State your name. A. Phillip Minthorn.

Q. How old are you?

A. I think that I am about 60 or 67.

Q. What band or tribe of Indians do you belong to? A. Cayuse tribe of Indians.

(Testimony of Phillip Minthorn.)

Q. Did you know Isaac Gober in his lifetime?

A. Yes.

Q. Do you know Louisa? A. Yes.

Q. Do you know whether Isaac Gober and Louisa ever lived together on the Umatilla Reservation as husband and wife?

A. Yes, I knew that they were living together as husband and wife but they never lived with me.

Q. Did they have any children that you knew of?

A. I only saw that they had one child.

Q. Was that before or after Isaac died?

A. This was after Isaac died.

Q. Do you know whether the child died or not?

A. This child died.

Q. After the allotments upon the Umatilla Indian Reservation what was the custom among the Indians in getting married?

A. The same as before the allotment and even *as* present time some of them marry according to the olden time.

Q. Was it and is it yet customary among the Indians on Umatilla Reservation for a man and a woman to agree with each other to be husband and wife, and then to live together as husband and wife?

A. Yes.

Cross-examination.

(By Mr. LOWELL.)

Q. You are a member of the Presbyterian church, are you not? A. Yes.

Q. How many years have you been a member?

A. I think that about pretty near 30 years, I know

(Testimony of Phillip Minthorn.)

for sure that it is over 20 years.

Q. Your people have had a mission on the reservation for 20 years, haven't they? A. Yes.

Q. Hasn't your church always required its people to get married according to the law of the State?

A. Yes.

Q. You have been a member of the Indian court upon the reservation, haven't you? A. Yes.

Q. Since the allotment hasn't that court required the Indians to be married according to law?

A. Yes, the Indian court requires the Indians to get married by law, but Indians don't want to do it sometimes.

Q. How long has the Catholic mission been upon the reservation?

A. It has been here for a good many years, I think about, maybe, 40 years. I am not certain, but I think it is about 40 years or it might be 30, don't know which.

Q. Isn't it a fact that since the allotment the Catholic people have required their people to get married according to the State law? A. Yes.

Redirect.

Q. Many of the Indians on the reservation do not belong to either Presbyterian church or the Catholic church, do they? A. Yes.

Witness excused.

[**Testimony of Luke Minthorn, for Defendant.**]

LUKE MINTHORN, called on behalf of the defendant, and being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. SLATER.)

Q. State your name. A. Luke Minthorn.

Q. How old are you?

A. I don't know my age.

Q. About how old are you? Are you over fifty years old?

A. All he knows that Phillip Minthorn is older than he is.

Q. How many years older?

A. I don't know anything about it.

Q. You are more than 21 years old, are you not?

Admitted that the witness is about 50 years of age.

Q. Are you a full blood Indian? A. Yes.

Q. What tribe do you belong to?

A. Cayuse.

Q. How long have you lived on the Umatilla Reservation?

A. For a good many years, when I first came to this place I was only a boy then.

Q. Were you acquainted with Isaac Gober?

A. Yes, I knew him.

Q. Do you know Louisa, who was on the witness-stand here? A. Yes, I know her.

Q. State whether you know that Louisa and Isaac

(Testimony of Luke Minthorn.)

Gober ever lived together upon the Umatilla Reservation as husband and wife?

A. I heard that Louisa was his wife, but I never saw them living together, myself.

Q. Was that before or after the allotment?

A. After the allotment.

Q. Did Isaac and Louisa ever visit you at your home, together? A. No, never.

Q. Is it customary upon the Umatilla Reservation, and has it been, since the allotments for an Indian man and an Indian woman to agree with each other to live together as husband and wife and then to go on and live together as husband and wife?

A. Yes.

Q. Is that according to the old custom that prevailed before the allotment?

A. Yes, that is the old custom among the Indians.

Cross-examination.

Q. Isn't it a fact that since the allotment the Catholic church and the Presbyterian church have required their members to be married according to the laws of the State and church?

A. Why, if a man and woman wished to be married they lived together and whenever they conclude that they should marry by the church or according to the laws of the State, why, they do so.

Q. You are an Indian policeman, are you not?

A. Yes.

Q. Hasn't the Indian court, since the allotment required the Indians to marry according to law?

A. At present time the agent or superintendent

(Testimony of Luke Minthorn.)

does not give us any instructions regarding legal marriages.

Q. How long have you been on the Indian police force?

A. Ever since that the Indian court was started.

Q. When the court was established and for some years after, didn't they try to compel all the Indians to be married according to law?

A. Yes, they required the Indians to be married legally and most of them have been married according to the State law.

Q. Do you know when Isaac Gober lived with this woman, how many years after the allotment?

A. I don't know when they first began to live together at all. I saw this woman when she visited my house one day and she had a child with her. That was after that man died.

Q. Well, at that time, was the Indian court in organization?

A. Yes, sir, and I was a policeman for some time before this woman came to visit my place.

Q. You don't understand me, what I mean is, how long had the court been running when the woman came to your house?

A. The court had been running for a long time, before this woman came to visit my place.

Witness excused.

[Testimony of Charley Van Pelt, for Defendant.]

CHARLEY VAN PELT, called on behalf of the defendant, being first duly sworn, testified as follows.

Direct Examination.

(Questions by Mr. SLATER.)

Q. State your name.

A. Charley Van Pelt.

Q. How old are you? A. 37.

Q. Where do you live?

A. I live three miles above town. Pendleton.

Q. Do you live upon the Umatilla Reservation?

A. Yes, sir.

Q. Are you a member of one of the bands of Indians located upon the Indian Reservation?

A. No, sir.

Q. How long have you lived upon the Reservation? A. 14 years.

Q. Are you a married man? A. Yes, sir.

Q. Is your wife a member of either of the tribes located upon the Umatilla Reservation?

A. Yes, Umatilla.

Q. Are you in part of Indian blood?

A. Yes, sir.

Q. Did you know Isaac Gober in his lifetime?

A. Yes, sir.

Q. Do you know Louisa? A. Yes.

Q. Do you know whether she and Isaac Gober ever lived together as husband and wife upon the Umatilla Indian Reservation? A. Yes.

Q. When was that?

(Testimony of Charley Van Pelt.)

A. That was since I came here 14 years ago.

Q. Do you know whether or not there was any children born to them? A. Yes, sir.

Q. How many

A. One was born to them while they were both living and the other was born shortly after the death of this father.

Q. Were they living together at the time of Isaac's death? A. Yes, sir.

Q. Did you see Isaac after he was dead?

A. No, sir.

Q. About how long did they live together?

A. I remember four years.

Q. Since you have lived upon the Umatilla Reservation, state, if you know, what has been the custom among the Indians about getting married.

A. According to the Indian custom as they used to live together without getting married by law.

Q. How would they get to understand each other in regard to that matter?

A. They understand in this way, they say that this is the Indian way to get married.

Q. Would the Indian men ask the Indian woman to be his wife and live with him as such?

A. Yes, an Indian man ask Indian woman if she could make up her mind to live with him, then they get married by the Indian way. If not it would be all right with them.

Cross-examination.

Q. About when did Isaac die, Charles?

A. Eleven years ago.

(Testimony of Charley Van Pelt.)

Q. That would be ten years ago last fall, did he die in November, '99?

A. He died 1899, but I couldn't say for sure what month.

Q. You came here then about '95 or '6?

A. I come 14 years ago.

Q. Fourteen years ago about now?

A. Fourteen years ago coming fall.

Q. Now, when you came to the reservation, isn't it a fact that there were a good many Indians getting married according to law?

A. There were just only Christians married by law.

Q. Wasn't the Indian court then trying to induce all of the Indians to get married according to the laws of Oregon?

A. Yes.

Q. Isn't it a fact that all, almost all, of the Walla Walla tribe of Indians are members of the Catholic church?

A. No, sir.

Q. Well, about what part of them, half?

A. About one-fourth.

Q. Now, about how many of the Cayuse are members of the Catholic church?

A. The most of them.

Q. About how many of the Umatillas?

A. None.

Q. About how many of the Cayuse are Presbyterians?

A. None.

Q. About how many of the Umatillas are Presbyterians?

A. The most of them.

Q. Now, what about the condition of affairs when

(Testimony of Charley Van Pelt.)

you came? A. It was about the same.

Q. And has continued that way up to the present time? A. Yes.

Q. Can you tell me about what proportion the people on the reservation are mixed bloods and how many are full bloods?

A. The mixed bloods are one-third.

Q. That was about the same proportion when you came? A. Yes.

Q. Now, isn't it a fact that most of the mixed bloods on the reservation have always gotten married according to the laws of the State?

A. No.

Q. Do you think that the proportion would be about the same among the mixed bloods as among the full bloods? A. Yes, sir.

Witness excused.

It is admitted by all parties that Isaac Gober died some time in the fall of 1899 probably in November 4th as is alleged in the complaint.

[Testimony of Captain Sumpkin, for Defendant.]

CAPTAIN SUMPKIN, called on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. SLATER.)

Q. What is your name?

A. Captain Sumpkin.

Q. How old are you? A. 67.

Q. Are you a full blood Indian? A. Yes.

Q. How long have you lived on the Umatilla

(Testimony of Captain Sumpkin.)

Reservation? A. Since I am a boy.

Q. Did you know Isaac Gober in his lifetime?

A. Yes.

Q. Did you know him when Louise and he were living together upon the Umatilla Reservation?

A. I did.

Q. How many children were born to them?

A. I seen a little child of their and one that wasn't born yet.

Q. Did you see this child after it was born?

A. I saw her after the child was born.

Q. Was that before or after the allotments?

A. After the allotment.

Witness excused.

[Stipulation Re Testimony of Mary Ann Parr.]

It is hereby stipulated and agreed by and between the parties hereto, defendant being represented by J. R. Slater, plaintiff by S. A. Lowell, that Mary Ann Parr for whom was issued a subpoena is ill at her home upon the Umatilla Reservation and unable to attend upon this court and that if she were present and sworn she would testify as a part of plaintiff's case in chief as follows:

State of Oregon,

County of Umatilla,—ss.

I, Mary Ann Parr, being first duly sworn, say that I am the wife of Frank Parr; that I live on the Umatilla Indian Reservation; that I am part Indian blood, and that I have lived on said reservation a long time; that I am probably more than seventy

years old and that I am sick and unable to go from home; that I know Rosa Saunders, who was formerly Rosa Parr; that I am not related to her except that she was at one time the wife of one of my sons; that I knew her father, John Gober, and her mother Maggie Gober; that her mother's maiden name was Maggie Russie; that I knew them when they were young; that they came to my home immediately after they were married, and that Maggie then had a boy probably about two years old, who was born to her before she was ever married, and he is the boy who was afterwards known as Isaac Gober, and who died in Pendleton, Oregon, in the fall of 1899; that the father of said boy was understood to be a man by the name of Norwest, and that I always understood that John Gober never claimed to be his father; that John Gober and Maggie Gober were afterwards divorced, and later Maggie married John Damain, and died while she was living with him; that I knew her well all her life, and know that all her children except Isaac and Rosa died in childhood.

I further say that I knew Isaac Gober all his life, and know that he was a half brother to Rosa Saunders, formerly Rosa Parr; that he died in young manhood between ten years and eleven years ago; that at the time of his death he left no mother, brother, or sister except said Rosa, and I do not know whether his father was living or not. He, Isaac, was an illegitimate child of his mother as I have always been informed. He left no wife to whom he was legally married, but there was an Indian woman named Louisa with whom he lived

more or less for the last two years of his life, and after he died there was a child born to her; that he just lived with her as Indians used to live without any marriage either by church or state; that Isaac was part Indian and had an allotment on the Umatilla Reservation; that except as stated Isaac left no wife or child, and that said child died in infancy.

her

MARY ANN X PARR

mark

Witnesses to her mark:

FRED PARR.

Mrs. IDA BUSHMAN.

And that she would say further that said Isaac Gober was born near Oak Grove in the Willamette Valley in the State of Oregon.

And that if she were asked whether on not she signed the original affidavit of which Defendant's Exhibit "A" is a copy she would answer yes.

[Testimony of Rosa Parr, the Plaintiff, in Her Own Behalf (in Rebuttal).]

ROSA PARR called in rebuttal in her own behalf, testified as follows:

Direct Examination.

(By Mr. LOWELL.)

Q. Did you hear the testimony of an Indian woman Louisa, given in this case? A. Yes, sir.

Q. She stated that about four years before her husband died she lived with you for a short while, what are the facts about that?

A. No, sir, she never, because I didn't know her at that time.

(Testimony of Rosa Parr.)

Cross-examination.

(By Mr. SLATER.)

Q. When was it she lived with you?

A. She never lived with me at all. But she came there a couple of days before my brother died.

Witness excused.

[Stipulation Re Testimony of Joseph Craig.]

ROSA PARR

vs.

UNITED STATES OF AMERICA, Trustee.

It is hereby stipulated and agreed by and between the parties hereto, plaintiff appearing by Stephen A. Lowell, her attorney, and defendant by Fee & Slater, attorneys for the claimant, Louisa, that Joseph Craig, an Indian, has heretofore testified herein, and that in some manner his testimony has been lost from the files; and that he therein stated in substance that he knew Isaac Gober in his lifetime, and that he and said Isaac were personal friends, that he also knew Louisa, and knew that Isaac and Louisa lived and cohabited together as husband and wife according to Indian custom during the last two years of Isaac's life, and knew that Louisa had a child born to her after Isaac died, and that she claimed that Isaac was the father of the child, and that the child died in infancy.

STEPHEN A. LOWELL,

Attorney for Plaintiff.

FEE & SLATER,

Attorney for Defendant.

In the Circuit Court of the United States for the District of Oregon.

ROSA PARR,

Plaintiff,

vs.

UNITED STATES OF AMERICA, Trustee,
Defendant.

Certificate [Re Testimony, etc.].

State of Oregon,
County of Umatilla,—ss.

I, Vida Johnston, deputy clerk of the above-entitled court, and the person to whom the above-entitled cause was heretofore referred for the taking of testimony, do hereby certify that there appeared before me for such purpose Stephen A. Lowell as attorney for plaintiff, John McCourt, United States Attorney for the District of Oregon, representing the United States as Trustee, and Robert J. Slater, representing an Indian woman named Louisa who claims an interest in said land, and that on Wednesday the 6th day of April, 1910, all parties being present by counsel as aforesaid, and the plaintiff and said Louisa being present in person, the taking of testimony was begun, and upon said date the following named witnesses, to wit: Rosa Parr in her own behalf and Frank Parr, Frank Gagon, Fred Parr, on behalf of the plaintiff were examined and the following named witnesses, to wit: Louisa on her own behalf and Moses Johnson, Phillip Minthorn, Luke Minthorn, Charley Van Pelt,

Captain Sumpkin, and Mary Ann Parr on behalf of the defendant, were examined, and that the most of said witnesses being unable to speak the English language, Fred Parr was duly sworn to interpret the testimony of Frank Parr, who spoke the French language, and Leo Sampson was duly sworn to interpret the testimony of the Indian witnesses, and all of said witnesses were duly sworn to tell the truth, the whole truth and nothing but the truth, and that thereupon an adjournment was had until the 13th day of April, 1910, when the testimony of the witness Joseph Craig was taken, and he having been sworn to tell the truth, the whole truth and nothing but the truth and the witness Joseph Craig speaking the English language, and thereupon further adjournment was had until the 16th day of April, 1910, when the rebuttal testimony of the plaintiff was taken and the testimony of Mary Ann Parr admitted as stipulated, and I hereby further certify that by agreement and stipulation of counsel made before me in open court the signatures of said witnesses to their respective testimony was expressly waived, and I further certify that the testimony hereto attached is the true and correct testimony of said witnesses, and each of them, and that the stipulations and admissions therein set forth are true and were made before me in open court and that the exhibit marked Defendants' Exhibit "A" is the only exhibit which was offered except so far as extended within the record, and I further certify that said evidence was taken, and whole thereof, at my office in room 12 of the Smith-Crawford Building in the City

of Pendleton, Umatilla County, Oregon, and that the record hereto attached comprises all the evidence in the case, and that each witness and each interpreter was by me duly sworn in the manner provided by law, and that each appeared before me in person at the time and place above *time and place above* noted and gave testimony as hereinabove set forth, and I further certify that the said testimony was by me taken and said record made pursuant to the commission to me issued out of the above-entitled court, which commission is hereto attached and made a part hereof.

Witness my hand at Pendleton, Umatilla County, Oregon, this 30 day of April, 1910.

VIDA JOHNSTON,
Referee.

[Affidavit of Mary Ann Parr.]

State of Oregon,
County of Umatilla,—ss.

I, Mary Ann Parr, being first duly sworn, say that I am the wife of Frank Parr; that I live on the Umatilla Indian Reservation; that I am part Indian blood, and that I have lived on said reservation a long time; that I am probably more than seventy years old, and that I am sick and unable to go from home; that I know Rosa Saunders, who was formerly Rosa Parr; that I am not related to her except that she was at one time the wife of one of my sons; that I knew her father, John Gober, and her mother Maggie Gober; that her mother's maiden name was Maggie Russie; that I knew them when they were young;

that they came to my home immediately after they were married, and that Maggie then had a boy probably about two years old, who was born to her before she was ever married, and he is the boy who was afterwards known as Isaac Gober, and who died in Pendleton, Oregon, in the fall of 1899; that the father of said boy was understood to be a man by the name of Norwest, and that I always understood that John Gober never claimed to be his father; that John Gober and Maggie Gober were afterwards divorced, and later Maggie married John Demain, and died while she was living with him; that I knew her well all her life, and I know that all her children except Isaac and Rosa died in childhood.

I further say that I knew Isaac Gober all his life, and know that he was a half brother to Rosa Saunders, formerly Rosa Parr; that he died in young manhood between ten years and eleven years ago; that at the time of his death he left no mother, brother, or sister except said Rosa, and I do not know whether his father was living or not. He, Isaac, was an illegitimate child of his mother as I have always been informed. He left no wife to whom he was legally married, but there was an Indian woman named Louisa with whom he lived more or less for the last two years of his life, and after he died there was a child born to her; that he just lived with her as Indians used to live without any marriage either by church or State; that Isaac was part Indian and had an allotment on the Umatilla Reservation; that ex-

cept as stated Isaac left no wife or child, and that said child died in infancy.

her
MARY ANN X PARR
mark

Witness to her mark:

FRED PARR.

Mrs. IDA BUSHMAN.

Testimony. Filed May 2, 1910. G. H. Marsh,
Clerk.

And afterwards, to wit, on the 10th day of December, 1910, there was duly filed in said court, a Petition for Appeal, in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

MAGGIE ELLEN PARR, JULIA AGNES PARR,
EZRA WALLACE FARROW by G. G. LEE,
Next Friend of the Said EZRA WALLACE
FARROW, a Minor,

Plaintiffs,

vs.

LOUISE COLFAX, ORVILLE D. TOWNSEND,
E. L. SWARTZLANDER, and THE
UNITED STATES OF AMERICA, Trustee,

Defendants.

Petition for Appeal.

The above-named plaintiffs, Maggie Ellen Parr, Julia Agnes Parr, Ezra Wallace Farrow, by G. G.

Lee, next friend of the said Ezra Wallace Farrow, a minor, and the United States of America, Trustee, Orville D. Townsend and E. L. Swartzlander, above-named defendants, conceiving themselves aggrieved by the order and decree made and entered August 17th, 1910, *nunc pro tunc* as of June 14, 1910, in the above-entitled cause in the above-entitled court, do hereby appeal from said order and decree, to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignments of error which is filed herewith, and they pray that this appeal may be allowed and that a transcript of the records, proceedings and papers upon which said order and decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

Dated December 9, 1910.

LOWELL & WINTER,
Solicitors and Attorneys for Plaintiffs in Error and
for Deft. Orville D. Townsend.

JOHN McCOURT,
United States Attorney and Solicitor for E. L.
Swartzlander, Deft.

Petition for Appeal. Filed December 10, 1910.
G. H. Marsh, Clerk.

And afterwards, to wit, on the 10th day of December, 1910, there was duly filed in said court, an Assignment of Errors, in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

MAGGIE ELLEN PARR, JULIA AGNES PARR,
EZRA WALLACE FARROW by G. G. LEE,
Next Friend of the Said EZRA WALLACE
FARROW, a Minor,

Plaintiffs,

vs.

LOUISE COLFAX, ORVILLE D. TOWNSEND,
E. L. SWARTZLANDER, and THE
UNITED STATES OF AMERICA, Trustee,

Defendants.

Assignments of Error.

Maggie Ellen Parr, Julia Agnes Parr, Ezra Wallace Farrow, by G. G. Lee, next friend of the said Ezra Wallace Farrow, a minor, plaintiffs, and Orville D. Townsend, E. L. Swartzlander and The United States of America, Trustee, defendants in the above-entitled suit, in connection with their petition for an appeal, makes the following assignments of error, which they aver occurred during the trial of the said cause:

I.

The Court erred in holding that Isaac Gober and

Louise Colfax, cross-complainant and one of the defendants herein, were legally married.

II.

The Court erred in holding that the said Louise Colfax was the wife of the said Isaac Gober.

III.

The Court erred in holding that the male child of the said Louise Colfax was the sole heir under the laws of the State of Oregon of the said Isaac Gober.

IV.

The Court erred in holding that said child of Louise Colfax became the owner of the equitable title in fee of the lands described in the bill of complaint, to wit: The South half of the Southwest Quarter (S. $\frac{1}{2}$ SW. $\frac{1}{4}$), of Section Twenty-three (23), Township Three (3) South, Range Thirty-five (35) East Willamette Meridian, which lands were allotted upon the Umatilla Indian Reservation, to said Isaac Gober.

V.

The Court erred in holding that upon the death of the said male child of the said Louise Colfax, the said Louise Colfax became the owner of the equitable title in fee of the lands last above described, under the Acts of Congress and the laws of the State of Oregon; that ever since the death of the said child, the said Louise Colfax was the owner in fee of the equitable title of said lands.

VI.

The Court erred in holding that said Louise Colfax was entitled and has been entitled to the rents, issues and profits of said lands, and erred in holding that

the United States of America, as trustee, holds the title to said lands in trust for the said Louise Colfax.

VII.

The Court erred in holding that the plaintiffs herein, Maggie Ellen Parr, Julia Agnes Parr and Ezra Wallace Farrow, have no interest in the said lands or any of the rents, issues and profits thereof.

VIII.

The Court erred in holding that the said Louise Colfax is entitled to all the moneys in the hands of the Clerk of the Circuit Court of the United States for the District of Oregon, received from E. L. Swartzlander.

IX.

The Court erred in holding and decreeing that complainant's bill be dismissed.

X.

The Court erred in not entering a decree dismissing cross-bill of Louise Colfax, one of the defendants herein.

XI.

The Court erred in refusing to grant plaintiffs the relief prayed for in their bill.

XII.

The Court erred in awarding to said Louise Colfax, costs herein, and the Court erred in not awarding costs to the plaintiffs herein.

Wherefore, the plaintiffs and appellants pray that the said decree be reversed and the Circuit Court be directed to dismiss the cross-bill; and the plaintiffs further pray that the Circuit Court be instructed to

enter such decree as is prayed for in the bill of plaintiffs.

LOWELL & WINTER,
Solicitors for Plaintiffs and Defendant Orville D.
Townsend.

JOHN McCOURT,
United States Attorney and Solicitor for E. L.
Swartzlander.

Assignments of Error. Filed December 10, 1910.
G. H. Marsh, Clerk.

And afterwards, to wit, on Saturday, the 10th day of December, 1910, the same being the 59th judicial day of the regular October, 1910, term of said Court—Present, the Honorable CHARLES E. WOLVERTON, United States District Judge presiding—the following proceedings were had in said cause, to wit:

In the Circuit Court of the United States for the District of Oregon.

No. 3156.

December 10, 1910.

MAGGIE ELLEN PARR, JULIA AGNES PARR,
EZRA WALLACE FARROW by G. G. LEE,
Next Friend of the Said EZRA WALLACE
FARROW, a Minor,

Plaintiffs,

vs.

LOUISE COLFAX, ORVILLE D. TOWNSEND,
E. L. SWARTZLANDER, and THE
UNITED STATES OF AMERICA, Trustee,

Defendants.

Order Allowing Appeal, etc.

On this 10 day of December, 1910, the plaintiffs Maggie Ellen Parr, Julia Agnes Parr, Ezra Wallace Farrow by G. G. Lee, next friend of the said Ezra Wallace Farrow, a minor, and Orville D. Townsend, one of the above-named defendants, by Lowell and Winter, their solicitors, appearing in their behalf, and the United States of America, Trustee and E. L. Swartzlander, by John McCourt, United States Attorney for the District of Oregon appearing in their behalf, filed herein and presented to this Court, their petition praying for the allowance of an appeal intended to be urged by them in the United States Circuit Court of Appeals for the Ninth Circuit, entered

in the above-entitled cause, in the above-entitled court, on the 17th day of August, 1910, *nunc pro tunc* as of June 14, 1910, and also praying that a transcript of the records, proceedings and evidence of papers on which said decree was herein rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for said Ninth Circuit, and such other and further proceedings may be had as may be proper in the premises.

IN CONSIDERATION WHEREOF the Court does hereby allow the appeal prayed for in said petition.

CHAS. E. WOLVERTON,
Judge.

Order Allowing Appeal. Filed Dec. 10, 1910. G.
H. Marsh, Clerk.

And afterwards, to wit, on the 10th day of December, 1910, there was duly filed in said court, a Bond on Appeal, in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

MAGGIE ELLEN PARR, JULIA AGNES PARR,
EZRA WALLACE FARROW by G. G. LEE,
Next Friend of the Said EZRA WALLACE
FARROW, a Minor,

Plaintiffs,

vs.

LOUISE COLFAX, ORVILLE D. TOWNSEND,
E. L. SWARTZLANDER, and THE
UNITED STATES OF AMERICA, Trustee,

Defendants.

Bond on Appeal.

Know All Men by These Presents, that we, Maggie Ellen Parr, Julia Agnes Parr and Ezra Wallace Farrow, as principals, and The Pacific Surety Company as surety, acknowledge ourselves to be jointly indebted to Louise Colfax, appellee in the above cause in the sum of Five Hundred (\$500) Dollars, conditioned that whereas, on the 17th day of August, 1910, in the Circuit Court of the United States for the District of Oregon, in a suit pending in that court, wherein Maggie Ellen Parr, Julia Agnes Parr, Ezra Wallace Farrow were plaintiffs, and Louise Colfax, Orville D. Townsend, E. L. Swartzlander and The United States of America, Trustee, were defendants, a decree was rendered against the said plaintiffs, and the defendants Orville D. Townsend, E. L. Swartzlander and The United States of America, and

in favor of the said defendant, Louise Colfax, and the said plaintiffs and the said Orville D. Townsend, E. L. Swartzlander and the United States of America, having obtained an appeal to the Circuit Court of Appeals for the Ninth Circuit, and filed a copy thereof in the office of the clerk of the court to reverse the said decree, and a citation directed to the said Louise Colfax, citing and admonishing her to be and appear before the United States Circuit Court of Appeals for the said Ninth Circuit at the City of San Francisco in said Circuit, on the 7th day of January, 1911, to do and receive what may pertain to justice to be done in the premises.

Now, if the said appellants shall prosecute their appeal to effect and answer all costs, if they fail to make their plea good, then the above obligation to be void else to remain in full force and virtue.

MAGGIE ELLEN PARR,
JULIA AGNES PARR,
EZRA WALLACE FARROW,

By J. P. WINTER,

Their Atty.

[Seal] PACIFIC SURETY COMPANY.

By THOMAS E. SMITH,

Its Attorney in Fact.

Attest: H. G. WHIPP,

Its Resident Assistant Secretary.

Approved by this 10th day of Dec., 1910.

CHAS. E. WOLVERTON,

Judge of the District Court of the United States for
the District of Oregon.

Bond on Appeal. Filed December 10, 1910. G. H. Marsh, Clerk.

[Certificate of Clerk U. S. Circuit Court to Record.]

United States of America,
District of Oregon,—ss.

I, G. H. Marsh, Clerk of the Circuit Court of the United States for the District of Oregon, pursuant to the order allowing appeal do hereby certify that the foregoing pages, numbered from four to 128, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Maggie Ellen Parr and Julia Agnes Parr, Ezra Wallace Farrow, by G. G. Lee, next friend of said Ezra Wallace Farrow, a minor, plaintiffs and defendants in the cross-bill, against The United States of America, Trustee, and Orville D. Townsend, also known as Orville D. Saunders, and E. L. Swartzlander, defendants and defendants in the cross-bill, and Louise Colfax, defendant and plaintiff in the cross-bill, as the same may appear of record and on file at my office and in my custody.

And I further certify that the cost of the foregoing transcript is Sixty-three and 80/100 dollars, and that the same has been paid on behalf of the appellants.

In Testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Portland, in said District, this 2d day of January, A. D. 1911.

[Seal]

G. H. MARSH,
Clerk.

[Endorsed]: No. 1937. United States Circuit Court of Appeals for the Ninth Circuit. Maggie Ellen Parr, Julia Agnes Parr, Ezra Wallace Farrow, by G. G. Lee, Next Friend of the Said Ezra Wallace Farrow, a Minor, and Orville D. Townsend, The United States of America, Trustee, and E. L. Swartzlander, Appellants, vs. Louise Colfax, Appellee. Transcript of Record. Upon Appeal from the United States Circuit Court for the District of Oregon.

Filed January 5, 1911.

F. D. MONCKTON,
Clerk.

